LIAM T. A. FORD ON CHICAGO'S GUN-RIGHTS REBELLION

REASON

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Aug/Sep 1994

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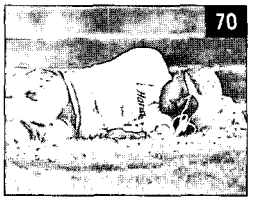

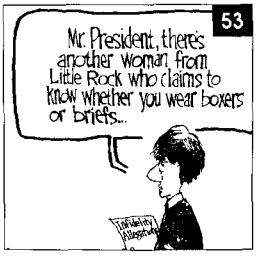

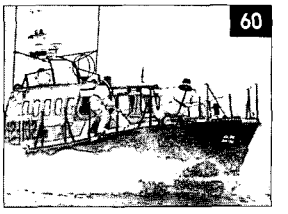

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Persecution Complex

By Virginia I. Postrel

The attack on "religious harassment" is part of a bigger picture.

IT WAS ONE OF THOSE ONLY-IN-LOS-Angeles events, a get-acquainted meeting of Chinese immigrant bankers and black entrepreneurs. One of the stars was the owner of a thriving home health-care business employing about a dozen people. Proud of succeeding without set-asides or affirmative action, he gave out copies of a trade magazine's article on his company's strategy.

He thought he was countering stereotypes. He thought he was showing how creating a sense of community among managers, workers, and clients could lead to business success. He thought he was demonstrating how much his company was respected in its industry. He had no idea how big a risk he was taking.

But there in the stack of article reprints was proof positive that this African-American business role model was blatantly violating federal civil-rights law. One of the photos showed his staff beginning their day with a group prayer. The article explained how important the company's Christian atmosphere was to its success. It is, of course, against the law to discriminate on the basis of religion.

I thought of that businessman recently, when a policy I'd once suggested as a joke—a satire on the excesses of sexual-harassment law—suddenly became very real. Last fall, the Equal Employment Opportunity Commission proposed new guidelines extending the concept of sexual harassment to other protected categories: race, color, national origin, age, disability, and religion.

The EEOC claims the guidelines "were intended merely to explain and interpret existing law." It is already illegal, for instance, to hold mandatory, or apparently mandatory, prayer meetings for employees. The home health-care entrepreneur is over the line.

But a lot of businesses aren't—yet. The Chick-fil-A fast-food chain, for instance, closes its restaurants on Sundays and holds voluntary Monday morning devotional services at its corporate offices. It is a privately held company whose policies and charitable activities reflect its founder's religious beliefs. His son Dan Cathy, the company's executive vice president, testified at a June Senate hearing that the EEOC's proposed guidelines would force the company "to eliminate all references to religion, which would significantly change the culture and morale at Chick-fil-A." Cathy and other critics fear the guidelines would make workplaces as devoid of religious expression as the public schools.

THE GUIDELINES IMPOSE THE EQUIVALENT of the "reasonable woman" standard (as opposed to the generic "reasonable person" standard). Whether an action constitutes harassment depends on the perspective of a reasonable member of the offended group—the reasonable black, the reasonable 70-year-old, the reasonable Jehovah's Witness. And harassment need not be deliberate; it can be anything that has the *effect* of "creating an intimidating, hostile, or offensive work environment."

So the safest policy may be a religion-free workplace. As Michael K. Whitehead, general counsel to the Southern Baptist Convention's Christian Life Commission, notes, "Employers trying to avoid lawsuits want a clear-cut, simple rule which can be understood and obeyed by all employees, whether high school drop-outs or Harvard MBAs. Their primary aim is not to be sensitive to EEOC's intentions or to maximize religious liberty. Their bottom line is to find a policy that will help them stay out of court."

Yet even a religion-free workplace is no sure protection. Federal law requires employers to accommodate employees' religious practices. If a company lets evangelical Christian employees proselytize on the job, it can be sued for creating a "hostile environment" for non-Christians. If it doesn't allow proselytizing, it can be sued for failing to accommodate evangelical Christians.

And for two months a year, most U.S. businesses wage a campaign of religious harassment. Employees are bombarded with songs, slogans, letters, artwork, and numerous other expressions of religious faith. Most businesses shut down to give believers time off to observe their rituals.

This pattern of harassment is known as the Christmas season. It seems OK only because we are used to it. And, as the EEOC notes, "Recent case law on this issue emphasizes the importance of considering the perspective of the victim of the harassment rather than adopting notions of acceptable behavior that may prevail in a particular workplace."

Just because shipyard workers have always posted racy pinups doesn't mean their employer is off the hook for sexual harassment. And just because a department store has always made its clerks listen to piped-in renditions of "Silent Night" doesn't mean that Christmas carols won't spark a suit. After all, says the EEOC, "employees have standing to challenge a hostile or abusive work environment even if the harassment is not targeted specifically at them."

The proposed guidelines have created a stir, drowning the EEOC in protest mail and leading to Sen. Howell Heflin's hearing. The agency will undoubtedly modify its rules, perhaps adding a disclaimer asserting that the EEOC does not intend to

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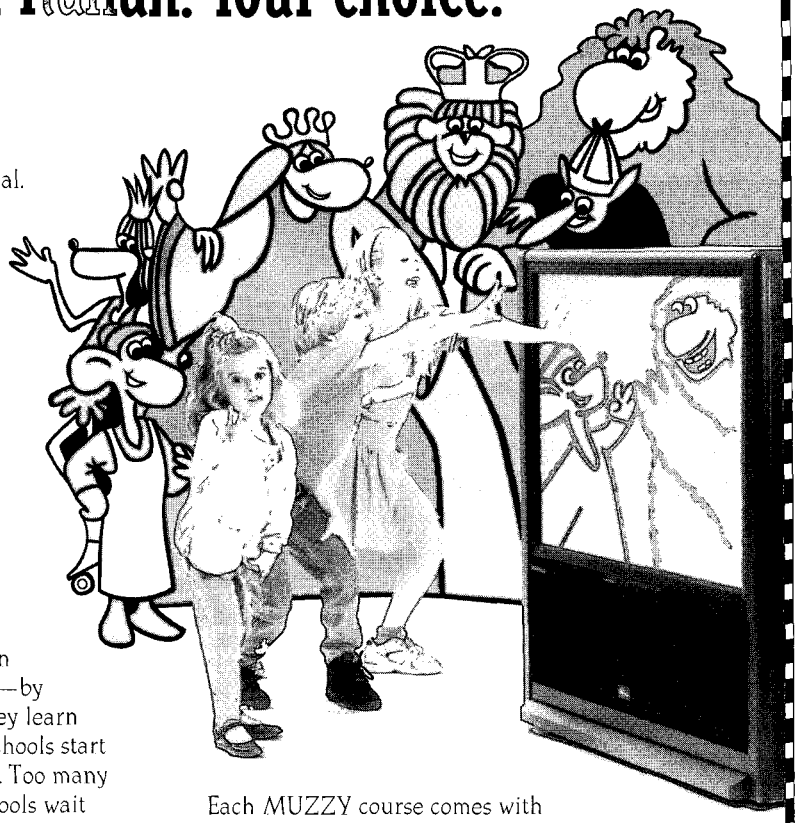

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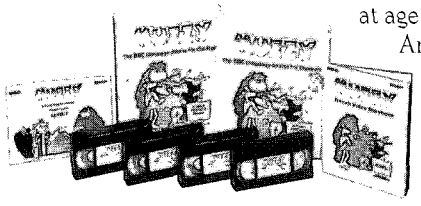

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create religion-free zones. The modifications may make the current controversy go away. Or Congress may intervene to exempt religious expression from being considered harassment. Either result will represent not good public policy but the triumph of organized religious groups lobbying for special treatment.

"Religious harassment" is a dangerous concept. It can be used as a club by disgruntled employees. The proposed guidelines prohibit free expression. They try to centrally plan the corporate culture of millions of wildly different businesses. They turn the private workplace into an extension of the public sphere. They impose impossible burdens on employers.

And none of that is new. "When I started this business 15 years ago, I spent 95 percent of my time out front with customers. Now I spend 95 percent of my time in back doing paperwork" to comply with new labor laws, Michigan restaurateur David Gillie told me recently. One of his worries: Anyone who gets fired can file an EEOC complaint if he or she belongs to a protected category. "It's amazing what they can put you through," he said. "They get a free lawyer and I have to buy one." Needless to say, settlements are common even in meritless cases.

Massive workplace regulation, down to the details of wall decorations, does more than lead to wasteful lawsuits. It busts up communities, destroying the institutions that stand between individuals and the state. We long ago told workers to forget about unions, that they can substitute bureaucrats and lawsuits for the give and take of collective bargaining. Now we're telling people like the health-care entrepreneur that they cannot create small businesses that reflect their most deeply held beliefs and hire employees who want to work in an atmosphere that expresses those ideas and values.

Anti-harassment law says, in effect, that every workplace must be homogenized, conforming to the standards of decorum set by legal intellectuals who may never have worked in a restaurant, on a loading dock, or on the trading desk of a securities firm. The law replaces "notions of acceptable behavior that may prevail in a particular workplace" with notions of acceptable behavior that prevail among legal scholars.

Yet all the while, American intellectuals go around mourning the loss of community. They usually blame capitalism. Its dynamic processes do break up established institutions, but they also create new ones, adapted to changed circumstances. No communitarian intellectual showed up at Heflin's hearing to defend the creation of community within the institutions of capitalism. For that, we had to depend on the self-interested likes of the Rev. Lou Sheldon, which means that the only freedom that got defended was freedom of religion. That freedom is important, but it's only part of the picture. R

The Rule of Lawton

By Jacob Sullum

Government subsidies for health care invite arbitrary intervention.

THE SCARIEST THING I'VE READ IN A long time was an article that appeared on the front page of *The New York Times* under the bland headline, "FLORIDA PREPARES NEW BASIS TO SUE TOBACCO INDUSTRY." The story was about the state's recently approved Medicaid Third Party Recovery Act, which does not sound like a law capable of arousing much fear (or interest). But this piece of legislation should send a chill down the spine of anyone who cares about the rule of law.

The act is aimed at forcing tobacco

companies to reimburse the state for the cost of treating smoking-related illnesses under Medicaid. Until now, product-liability suits against tobacco companies have had very little success. It's hard to prove in any given case that smoking caused a plaintiff's illness. Furthermore, juries have generally accepted the argument that smokers voluntarily assume the risks involved in smoking. The Florida law says the state does not have to worry about these barriers: It's enough to show that smoking is statistically associated with disease, and it doesn't matter that smoking is a free choice.

If the law is not repealed (many legislators who voted for it apparently did not understand its effect), it will eventually be challenged in court. It's hard to imagine a clearer violation of the Due Process and Equal Protection clauses, which represent safeguards that are essential to the rule of law. Whatever their statist sympathies or ambitions, American judges and legislators still claim to believe that government actions should be constrained by procedural rules, that laws should be generally applicable and announced in advance, that like cases should be treated alike, according to neutral principles. Government officials may not capriciously single people out for punishment. They may not do whatever they like, however they like, to whomever they like.

Yet with the stroke of a pen, Florida Gov. Lawton Chiles has chucked this venerable tradition, the bedrock of the common law and the Constitution. He has announced that tobacco companies, unlike other firms faced with a product-liability suit, may not dispute the claim that their product caused the harm in question and may not argue that consumers should be responsible for their own decisions. He has in effect declared the tobacco companies guilty before they reach the courthouse. Harold D. Lewis, general counsel to Florida's Agency for Health Care Administration, justified the preemptive strike this way: "The state can change the legal criteria for a suit, and that is what we have done."

Business people in Florida are worried that the law's broad language could apply to any industry that makes products associated with disease or injury, such as candy, beef, cars, bicycles, swimming pools, chain saws, or pharmaceuticals. Chiles has tried to reassure them by insisting that his target is the tobacco companies, and he has offered to narrow the wording of the statute accordingly. Thus he has admitted that his support for the measure is completely unprincipled, based on nothing but his animosity toward a particular industry. "We're going to take the Marlboro Man to court," he gloated after signing the bill.

CHILES HAS DISCOVERED IN MEDICAID A license to use the law as a vehicle for his personal tastes and preferences. "The state does not buy that package of tobacco, so we don't read the warning on the side," he said. "We just pay for the carnage." Politicians already use this rationale to tax smokers. Indeed, you might wonder why the state of Florida needs to make tobacco companies pay for the health-care costs associated with smoking when that's what cigarette taxes are supposed to do.

But logic is not the point. In this connection, Medicaid is simply an excuse to raise revenue and harass an unpopular industry. And experience shows that government subsidies for health care can be used to justify a wide range of measures aimed at punishing, discouraging, or controlling a risky activity: drug prohibition, seat-belt and helmet laws, alcohol taxes, a reduced speed limit, restrictions on bungee jumping—you name it. Since all activities involve some measure of risk, legislators and bureaucrats get to decide which ones should be taxed, regulated, or banned. This is a recipe for the arbitrary exercise of power, the antithesis of the rule of law.

The problem can only get worse if the Clinton administration succeeds in putting most or all of the health-care industry under government control. A person who engages in risky activity and is privately insured or pays for his medical care out of his pocket can at least argue that he bears all the costs involved. A smoker, for example, can plausibly say, "I'm not imposing a burden on anyone. My insurance company has agreed to cover me in exchange for my premium, and that's the end of it. Mind your own business." But once we're all covered by a government-sponsored system, especially one that eliminates risk-based pricing, the smoker's politically incorrect habit—and yours—will be everyone's business. ®

Good news: Charles Murray's classic *In Pursuit: Of Happiness and Good Government* is back in print, from ICS Press in San Francisco. Back in December 1992, when we asked a host of contributors which three books they'd want the president to read, it was the number-one pick—and out of print.

Bad news (we hope): REASON will be on hiatus for a month. The next issue you receive will be dated October.

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The Reason Foundation, a free-market think tank and publisher of *REASON* magazine, is seeking a full-time director of development. Duties include in-person gift solicitation, prospect research, and proposal writing. Additional responsibilities include travel, budget management, and supervision of annual-giving and planned-giving programs.

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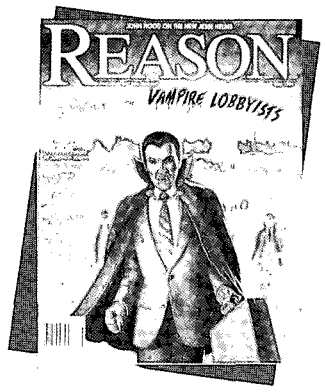

Leech Control

Jonathan Rauch's article on Washington lobbyists ("Suckers!," May) begins brilliantly and incisively but then comes to a lame halt, with Mr. Rauch concluding that it ain't so terrible after all, since America is such an "open" society. Please!

The only way to limit the power of money on Capitol Hill is to reduce the value of money. Lawmakers need the money of lobbyists in their campaign coffers to run for re-election. With public campaign financing and severe spending controls, deeper pockets would mean nothing. Candidates would be forbidden to spend any of their own money and would receive only a limited amount of public funds—just enough, say, to mail out position papers to their constituents.

Some say that banning lobbyists would infringe on First Amendment rights. But the Bill of Rights was designed to protect people from the government, not to protect the government from reasonable restrictions placed upon it by the people. For the same reason that no one may lobby or give money to a Supreme Court justice in the hope of a favorable ruling, no one should be allowed to lobby or give money to a lawmaker in an attempt to influence his vote. Bribery should be returned to where it belongs: under the table.

Steven E. Curtis
Spring, TX

As a "parasite" with some 30 years' experience before I retired five years ago, including 20 years as a lobbyist in Washington with one of the country's largest grass-roots organizations, I do not buy the generic description of all lobbyists as parasites. A great many lobbyists not only represent the interests of those who pay their salaries but, as many members of Congress will attest, provide an invaluable source of information on thousands of facets of the American economy.

Rauch fails to mention that the most powerful group of lobbyists in Washington consists of those who speak for the hundreds of agencies of the federal government, not to mention state and local government. At least half the time, expense, and effort of lobbyists is spent attempting to stop or make less intrusive new laws that result in more regulation and suppression of initiative and investment. Lobbyists spend as much time fighting the growth of the federal leviathan as they do seeking favors from it.

If there is a lobbyist problem, the answer is to drastically cut the size and power of government at all levels. With fewer bureaucrats to influence and with less tax money to transfer, the so-called problem with lobbyists will solve itself.

C. H. Fields
Alexandria, VA

Flight Risk

On the subject of "budget constraints" resulting in "outdated equipment" for the Federal Aviation Administration ("Sky Cops," May), Robert Poole neglects to mention a government-sponsored scam called the Aviation Trust Fund. This fund, established years ago, is a repository of airline ticket taxes and general-aviation fuel taxes that now amounts to about $12 billion. The purpose of putting taxpayer extractions into this fund was to improve the airport and air traffic control system. Why haven't these funds (user fees) been deployed to address the "problems" Mr. Poole sees as a crisis?

The masters of legerdemain who keep our country's books of account need the Aviation Trust Fund to help their nefarious accounting system look better. When the citizens are given the bad news about our annual deficit position, the reported deficit is reduced by the unspent (albeit fictional) money in the Aviation Trust Fund. The "accumulations" in this trust fund are, therefore, quietly reported and scrupulously guarded.

Had the ATC system been designed from the beginning by accountable businessmen and women, you can bet it would be more efficient and less expensive. To now advocate that the aviation industry remove the FAA's "budget constraints" through user fees and fully fund this gluttonous bureaucratic structure defies reason.

J. Curtis McKay
Sheboygan, WI

Robert Poole suggests "corporatizing" the air traffic control function. Why not just abolish it? This could be easily done for the expensive en-route portion, if the pilots were allowed to see other aircraft under instrument (blind) conditions instead of relying on ground-based radar.

The satellite-based Global Positioning System (GPS) permits accurate navigation. A device similar to the present transponder could use the information from the GPS and broadcast the exact location and altitude of each aircraft every few hundred milliseconds. Nearby aircraft could take this information, compare it with their own location, and display the results to the pilot(s), a simple programming task.

The current "rules of the road" for visual flight would tell pilots how to avoid other aircraft. The display unit could also watch for potential conflicts and give directions to the pilot on how best to handle them.

Sherwood R. Kaip
El Paso, TX

Why make the air traffic control system one big government corporation, like the Post Office? Why not make each facility a separate government corporation? Air traffic control facilities already hand flights off to other facilities under other

All this talk about AIDS is really infuriating.

Unless you act on it, it's meaningless. Which is why, since 1985, Chevron has donated over three-quarters of a million dollars to AIDS-related causes. And why the people of Chevron have contributed thousands upon thousands of volunteer hours. It's not a cure. But maybe, just maybe, it'll help find one.

Chevron

People Do.

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management chains and even other systems in other countries.

Whatever competitive pressures exist will be amplified, and local airports will be better able to work closely with local air traffic control facilities without having to go through a huge bureaucratic chain of management. The government will find it easier over time to let go of 100-percent ownership of the facilities, as many find themselves under pressure to seek investors (through bonds or stocks) to finance modernization and expansion.

Recent and future advances in radio technology will make local (and regional) competition possible. This will be easier to accomplish when the entire system is not a monolithic national corporation.

Brooke King
Albuquerque, NM

Poole would have us believe that the entire ATC system is falling apart and only "the heroic efforts of overworked and often underpaid controllers and technicians" are preventing a major calamity. The only solution Poole offers is to privatize ATC.

As an instrument-rated private pilot I too follow the machinations of the FAA's ATC, but I can tell you from personal experience that the system works. Yes, the FAA has been slow to incorporate some newer technology, such as the Microwave Landing System, and there are the occasional highly publicized accidents and near-accidents. But per passenger mile, flying is probably the safest form of transportation. The United States has some of the safest air travel in the world, and it's getting better.

Would Poole's privatized ATC be any better? He tantalizes us by asking if we would choose a flight "guided by highly skilled air traffic controllers, using the latest high-tech radars, satellite-based navigation, and state-of-the-art computers? Or a system in which the busiest towers and control centers are staffed by some of the least experienced people, running equipment that relies on vacuum tubes, depending exclusively on ground-based radio beacons, and using computers two or three generations old?"

Poole would have us believe his description of the older, overworked system accurately describes ATC here in the United States. At best, he exaggerates.

While every controller is different, they have all been well trained and get experience working at lower-traffic airports before moving to the big regional airports. And it's doubtful that every one of the more-experienced controllers automatically applies for the lowest-stress (i.e., smallest airport) job available. Some people want to be "where the action is," or enjoy their work and don't want to have to move to a different location.

Poole makes it sound as if all of ATC's electronics depends on antiquated vacuum tubes. But most of the electronics used by ATC is solid-state. Some ATC equipment, such as high-power radar transmitters and display screens, still uses "vacuum tubes," but virtually every computer in the world has a "vacuum tube"—a cathode-ray tube—in its monitor. Radar transmitters typically use traveling wave tubes, or klystrons. Even though they are "tubes," they are still very often the best way of generating the high power needed for effective radar. Even space-borne transmitters still use TWTs because the solid-state alternatives either cannot generate the required power or are too new to have established reliability.

Poole says the ATC system depends exclusively on ground-based radio beacons and implies that this method of navigation is inadequate. Neither claim is true. Transoceanic airline flights have used inertial navigation system for years, and ground-based radio navigation equipment works just fine and is easy to monitor and repair. Satellite navigation, the only other alternative, isn't used as much because it is still too new and has its own reliability problems.

It is true that more and better equipment is available and should be installed. Poole correctly points out that federal procurement regulations have delayed getting the right equipment for the FAA to modernize where it is appropriate. But this is also true for any government purchasing operation, especially the military.

There are alternatives to privatization. Change the FAA's salary structure, for example, to reflect cost-of-living adjustments for different regions and job descriptions. Then the busiest airports in the most expensive cities would offer the highest salaries and attract better-qualified controllers. Waive the extensive government purchasing regulations for new capital equipment. Right now, the technology is available and, presumably, the money is there, but new radars and computers aren't being installed because of bureaucratic red tape.

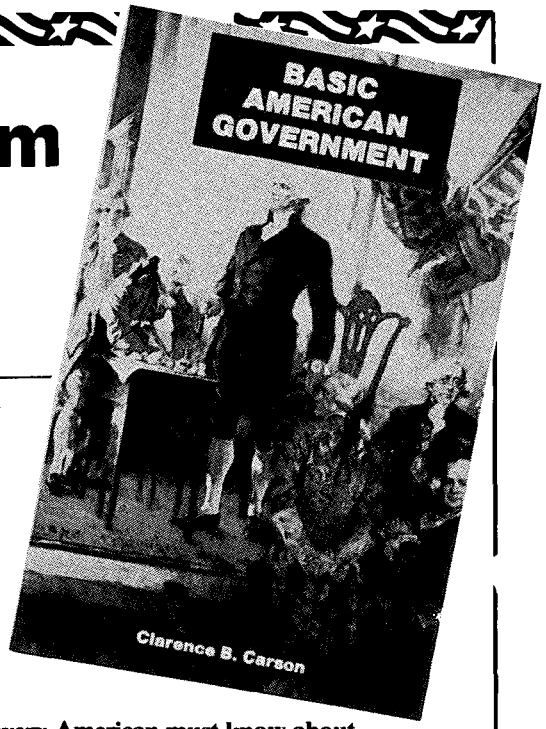
Edward M. Teyssier
La Jolla, CA

Mr. Poole replies: Messrs. McKay and Teyssier repeat all the arguments for "reform" of the FAA that have been proposed over and over for the past 20 years: stop abusing the Trust Fund, modernize controller compensation, reform procurement regulations, etc. No serious reform in any of these areas has been carried out, which is why a near-consensus has now developed that *structural* reform is the only workable approach. The basic problem is Congress, which insists on manipulating the Trust Fund to mask the size of the budget deficit and simply adding new layers to personnel and procurement regulations rather than abolishing them.

The record of corporatization overseas speaks for itself. Freeing an ATC enterprise from government "oversight" and funding, and establishing a direct relationship between services provided to users and revenue received by the enterprise, are the keys to real reform. Airways Corp. of New Zealand has modernized that country's ATC system while reducing annual operating costs by one-third (between 1988 and 1993).

Readers Kaip and King would prefer more-radical reforms, and so would I. My article presented the maximum extent of reform that I judge (just barely) possible to achieve at this point, after 17 years of work in this area. If we can finally liberate the ATC system from the clutches of Congress, making it independent and totally user-funded, it will be a huge accom-

Why does this differ from every other handbook on our government?



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plishment. To have any hope of moving toward either cockpit-oriented ATC technology or separately owned ATC facilities, a necessary precondition is getting ATC out of the FAA, out of the federal budget process, and into a corporation controlled by its users.

Science Fictions?

In his review of *Uncommon Sense: The Heretical Nature of Science* ("Not-So-Popular Science," May), Lee Dembart quotes author Alan Cromer: "Scientific thinking didn't—and couldn't—evolve from the prophetic tradition of Judaism and Christianity." Cromer evidently knows nothing of the work of the physicists Pierre Duhem and Stanley Jaki. Duhem showed that the development of science in the Middle Ages from its Greek beginnings was nourished crucially by Judeo-Christian belief, that the motivation to do the arduous labor of scientific discovery depended on the faith that the world was orderly because it was the orderly work of a Creator and on the belief that we had the power to understand the world because we were made by the same Creator. Duhem's work is most easily read through Jaki's books: *The Road of Science and the Ways to God* (1978) and *Science and Creation* (1974).

Dembart states: "We certainly can hold up Euclid's geometry as the model for all knowledge: Start with premises about which no one can disagree, and then, using logic alone, prove theorems that are as certain as anything we know." That's not the way most science works, simply because there are usually no rock-solid foundations to start with. Reason isn't so simple. One must build up a structure of knowledge through a method of coherence. As Jean Piaget shows in *The Construction of Reality in the Child* (1954), that's what each of us did to attain ordinary knowledge when we were babies.

Dick Hazelett
Colchester, VT

Lee Dembart seems to suggest that our only epistemological alternatives are a subjective universe in which all truth is private and local, and an "objective" cosmos in which "we can learn about the world, but we are essentially passive observers of it." Both propositions are untrue. Independent reality exists; the world is not a lucid dream. But human beings are not passive, objective observers; we are entangled in our universe and cannot avoid constantly changing it. Dembart asks whether the world is discovered or invented. The obvious, simple answer is: both.

Does Dembart honestly believe that there exists no socially constructed inter-

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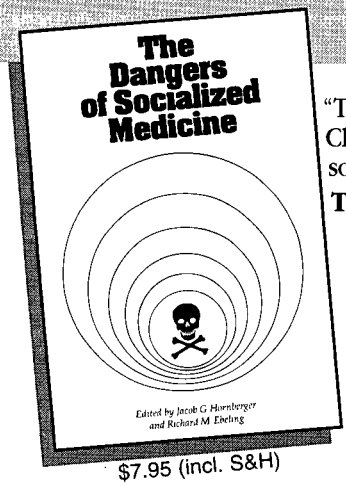

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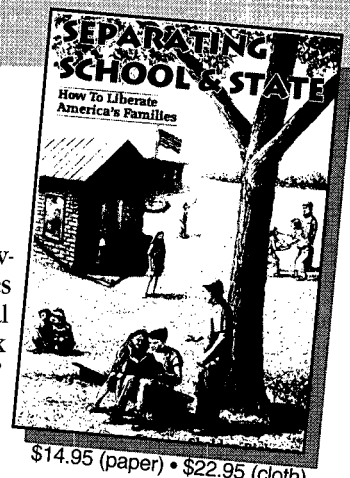

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subjective zone between independent truth and private belief? He gives that impression when he sneers at the idea of "the social construction of reality." Does Dembart really think that the rhetoric of objective science is never a cover for prejudiced scientism, that one cannot question the scientist's pose of impassioned neutrality without giving up the ideal of the impassioned, neutral scientist?

It is possible, I suppose, that Dembart simply thinks that such critiques of human fallibility are in fact assaults on independent truth itself. If so, he is familiar with only a slender portion of the literature he is criticizing. Yes, a lot of "postmodern" thought is airy nonsense, and much of it fails on its own terms. That is no excuse for ignoring the real issues it raises.

Jesse Walker
Port Townsend, WA

Mr. Dembart replies: Dick Hazelett makes two points: First he says religious thinking crucially nourished the development of science in the Middle Ages. This is rather an odd claim, I think, as there wasn't very much science done during the Middle Ages, a period also known—with good reason—as the Dark Ages. Religious thinking was in control, and it stifled science and scientific thought, which didn't get going until the Renaissance.

Mr. Hazelett's second point is that I am wrong to think that science is like geometry. But that is not what I said. In the sentence immediately after the one he quotes, I wrote, "Unfortunately, only geometry is like geometry." I feel an emotional and an aesthetic attraction to the certainty of geometry. It is a model for all knowledge, unattainable in other realms.

I agree with Jesse Walker that we both discover the world and invent it. But the proportion of discovery and invention varies greatly across the spectrum of human endeavor. The social arena may have a good deal of the social construction of reality. The hard sciences do not.

As I write these words, I am looking out my window at the Golden Gate Bridge. Whether that bridge stands up or falls down has nothing to do with the race, gender, class, or sexual orientation of the designer. It has only to do with the laws of physics and the skill of engineers and builders in complying with them. Does Mr. Walker think otherwise?

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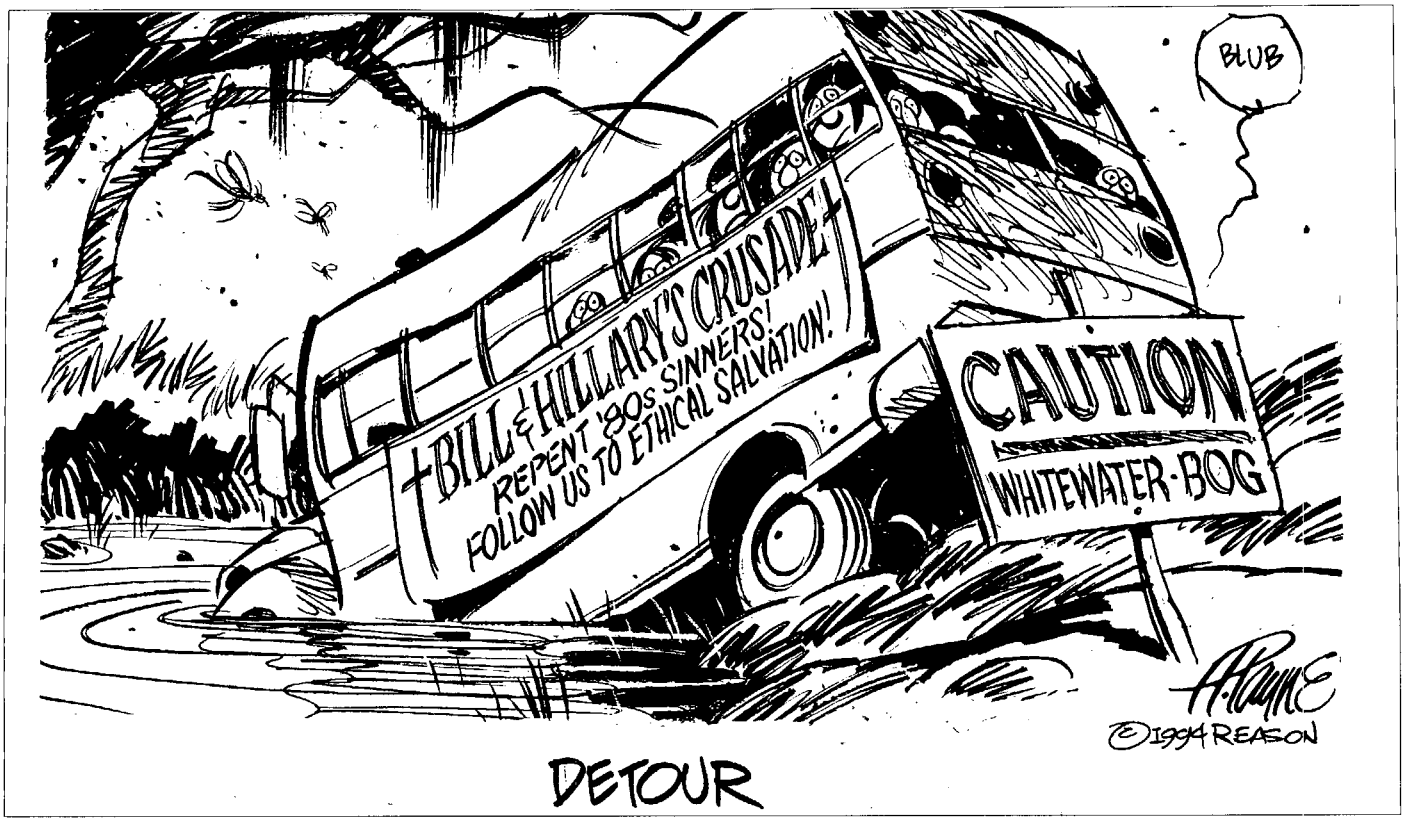
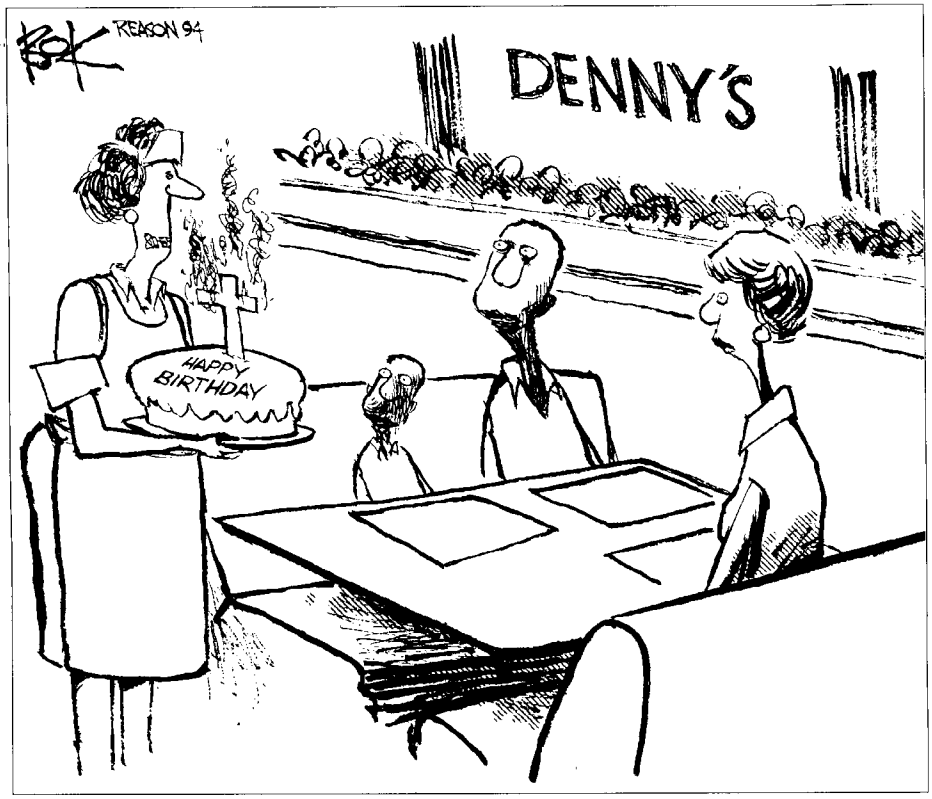


DETOUR

HENRY PAYNE

REASON ©1994 STANTIS
So, as you can see, sir, the Reformers are pushing hard for free markets while the Hardliners cling fiercely to socialism...
I know, but what can I do?...
after all, she is my wife...
HEALTH CARE
DING DONGS
KISS ME I'M LIBERAL

SCOTT STANTIS



In Illinois, the Avery Coonley School has been banned for two years from the state science fair. Were they caught cheating? No, they were caught winning. After taking its fourth straight state championship, the team was banned by officials who wanted to give other schools a chance at the title. This must be what they mean by "the thrill of victory."

The Boston public schools have a policy against bringing guns to school. There are no exceptions. So when one was found in 7-year-old Amber Nickoles's bag, the principal suspended her for three days and ordered her to undergo psychological evaluation. That'll teach her to bring a pink water pistol to class.

San Diego County Supervisor Leon Williams knows racism when he sees it. And he has seen it in county literature warning people about a dangerous new strain of bees that has made its way up from South America. He's upset that a bee that is "aggressive and nondomesticated and attacks you" is referred to as Africanized. The bees originated in Africa.

In urging a congressional ban on certain semiautomatic rifles, Attorney General Janet Reno said, "Assault weapons ...have no place in a civilized society." She didn't seem to feel that way 10 years ago. In 1984, then–State Attorney Reno signed federal forms allowing a former aide to own a fully automatic Colt M16A1. Apparently, her friends aren't part of "civilized society."

One Texas woman thinks that the books she reads and the television shows she watches have nothing to do with her ability to serve on a jury. Unfortunately for Dianna Brandborg, a judge disagrees. She was sentenced to three days in jail for refusing to answer these questions when they were posed to prospective jurors.

In New Haven's Long Wharf Theater, an audience member stormed the stage during a performance of the play *Faith Healer* and demanded that one of the characters put out a cigarette she was smoking.

Students at Grand Forks, North Dakota's Central High will soon vote on a new name for their sports teams. The old name, Redskins, was dropped due to racial concerns. The choices are Grey Wolves, Knights, Pioneers, and Pride. Let's see. *Grey Wolves* would just reinforce the false image of the wolf as a mad indiscriminate killer. *Knights* were a militaristic part of a patriarchal society. *Pioneers* celebrates those who drove the Native Americans from their lands. And *Pride* always goes before a fall.

During a power outage, 16-year-old James Gallagher figured out a new technique to find his way about in the dark. He filled a bowl with Final Net hairspray and lit it. The flames ignited the bottle he was still holding, causing it to explode. The boy suffered second- and third-degree burns over his face, arms, hands, and chest. He's now suing the manufacturer, claiming that the label on the bottle of hairspray warning that it was flammable was too small.

Who'd want to shoot at Alaska state Rep. Joe Sitton? No one, it turns out. Juneau police investigating Sitton's complaint that he was fired on as he walked to his hotel room concluded he'd simply heard a car backfiring.

Police in Johnstown, New York, were alarmed by men who would show up at night in cars with New York City license plates and buy up all of the city's baby formula. They wanted to detain them, but buying in bulk isn't illegal. Suspecting that drugs were involved, though they didn't know how, the police asked the DEA to investigate. Eventually, authorities determined that the men were simply coming in to buy the formula, which is substantially cheaper in Johnstown, and reselling it in New York City.

New York state has made it illegal to "interfere" with a woman who is breastfeeding, even if she hasn't covered herself. Those who violate the law face up to five years in prison and a $5,000 fine.

—Charles Oliver

Comic Injustice

A Florida obscenity trial may have wide implications for artists.

By Nick Gillespie

WHEN 24-YEAR-OLD ARTIST Michael Diana sold two copies of his self-published comic book *Boiled Angel* to undercover deputy sheriffs in Florida's Pinellas County, he didn't exactly profit from the sale. Instead, Diana was arrested and charged with publishing, advertising, and distributing obscene materials.

At his trial last April, Diana's jury agreed with witnesses for the prosecution who testified that *Boiled Angel* had no literary or artistic merit and that it appealed only to "deviant groups" and "those who have a libertine bent in their thinking." Diana, who faced a possible prison stay of three years, was sentenced to three years' probation and fined $3,000.

Under the terms of his probation, he must perform eight hours of community service a week, attend and pay for a course in journalistic ethics, and submit to periodic searches to confirm he is no longer producing obscene material. And because Diana must also refrain from all contact with anyone younger than 18, he has lost his job as a clerk at his father's convenience store.

Ironically, the copies bought by undercover policemen were Diana's only local sales. Diana sent *Boiled Angel*, which sold about 300 copies per issue, through the mail only to subscribers in the United States, France, Australia, and Africa. The comic consists of illustrated stories and poems attacking Christianity and depicting serial murders, satanic rituals, sexual assaults, and cannibalism. Diana testified in court that he intended his work to be "a mirror to our society, to show its problems." But after his sentencing, Diana said, "I won't do anything that might be considered obscene."

Seth Friedman, the publisher of *Factsheet Five*, a San Francisco-based review of underground comics, says he believes Diana's conviction will "absolutely" have a chilling effect on artistic expression, even outside the comic-book community. "Especially if you live in a non-urban part of the country," says Friedman, "you realize you have to be very, very careful if your work deals with sexuality or religion." Friedman, who testified on Diana's behalf, doubts the comic-book artist would have been convicted—or even tried—in a more cosmopolitan setting.

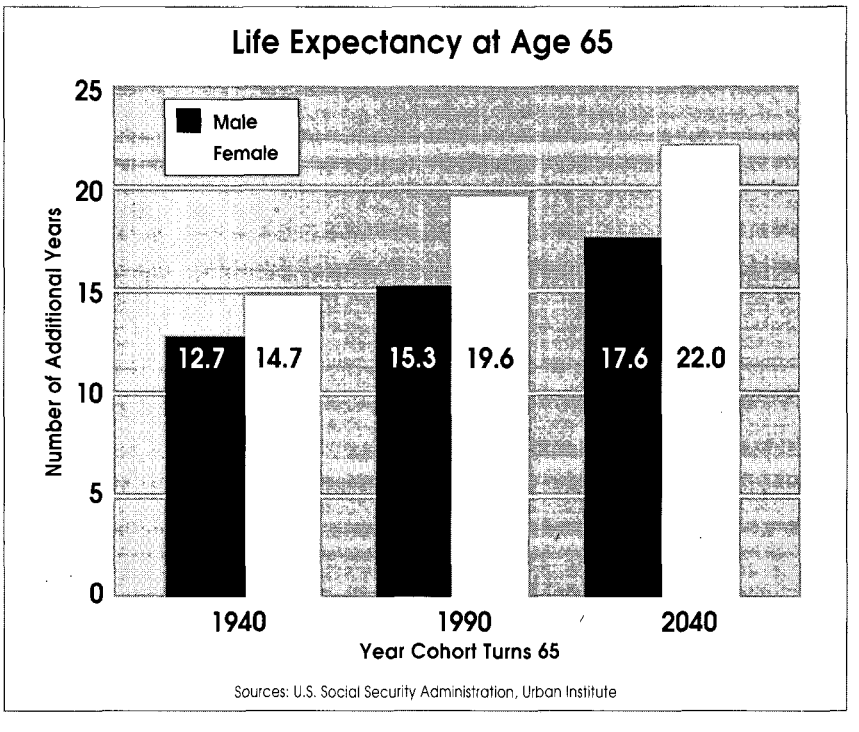
But he notes that small-town successes will likely encourage prosecutors in bigger cities to try similar cases. "This sort of censorship will lead to larger things if it's not snuffed out at the source," says Friedman. R

Age Before Booty

Social Security recipients are living longer after they retire.

By Rick Henderson

The Social Security time bomb continues to approach detonation. Each working adult is supporting more and more retirees. The ratio of workers to retirees dropped from 12 to 1 in 1950 to 4 to 1 in 1990. The ratio is projected to be 2.2 per retiree in 2050. And Americans are living longer after they start collecting Social Security checks. A 65-year-old is expected to live about 10 years longer in 2040 than he did in 1940. In their new book, *Retooling Social Security for the 21st Century*, Urban Institute scholars Eugene Steuerle and Jon Bakija suggest pushing up the retirement age from its scheduled 67 in 2032 to 70 and then "indexing" it if life expectancies continue to increase.



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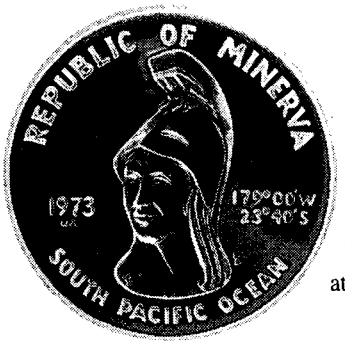

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Balance Sheet

By Rick Henderson

Assets

Farm Report. Agriculture Secretary Mike Espy may represent an endangered species: New Democrats in the Clinton administration. The department plans to abolish agricultural marketing orders, which punish produce growers for having bumper crops. Since 1937, marketing quotas have forced orchard owners to destroy billions of surplus oranges, lemons, and pecans. Citrus planners will no longer make consumers pay more by forcing farmers to sell less.

Stamp Act. Big-ticket British privatization didn't end with Margaret Thatcher's retirement. John Major's government wants to sell 51 percent of the Royal Mail—Britain's postal service—to private investors. The principal backer of postal privatization is Trade Secretary Michael Heseltine, who may become the next Conservative leader if the Tories dump Major.

Green Banks. Florida Wetlandsbank and Wetlands Environmental Technology Inc. try to create value out of previously worthless swamps. *Engineering News-Record* reports that these private wetlands banks, approved by the Army Corps of Engineers, let property owners build on sensitive land if they purchase or trade for nearby tracts of undeveloped wetlands. Owners keep the use of their property; wetlands continue filtering water and sheltering birds.

North Star? Vermont, home of socialist Rep. Bernie Sanders, says no to government-run health care. First, the legislature rejects a single-payer, Canadian-style system backed by Sanders. Then it turns down a Clintonesque employer mandate proposed by Gov. Howard Dean, a liberal Democrat. Finally, it refuses a Republican program with individual mandates. "If even this modest reform could not be achieved in Vermont," says *The Economist*, "what emerges from Congress in Washington may be still more meagre."

Liabilities

Disk Drive. From flat-panel screens to "manufacturing-technology centers," White House industrial policy never ends. Energy Secretary Hazel O'Leary announces a $50-million program to design commercial software for supercomputers. Half the money will come from taxpayers. Among O'Leary's accomplices will be Cray Research, Alcoa, AT&T, and Hughes Aircraft.

Clinic Clunker. The First, Fifth, and Eighth Amendments take another beating. Congress passes—and the president signs—a bill outlawing abortion-clinic protests. Even for nonviolent protests, criminal penalties include prison terms from six months to life and fines of up to $250,000.

Draft Dodge. A March Pentagon report says "peacetime draft registration could be suspended without irreparable damage to national security." But Bill Clinton keeps registration alive. "The armed forces," says Clinton, must "know that the general population stands behind them, committed to serve." As ready as you were 25 years ago, Mr. President?

Night Shift. The Supreme Court extends the use of government employees as parents. It upholds a Dallas curfew that forces anyone younger than 17 to be off the streets before 11 p.m. weekdays and midnight weekends. More than 1,000 cities, including Los Angeles, Detroit, and Atlanta, already have curfews. As a result of the decision, predicts Dallas attorney Bruce Morrow, who appealed the case to the Supreme Court, "every major city in this [federal] circuit is going to have a curfew."

Label Lingo

Federal language cops return to the grocery store.

By Rick Henderson

THE FEDERAL GOVERNMENT WILL let Stouffer's claim that a frozen lasagna dinner is healthy. But Mott's can't say the same about apple juice. In an attempt to prevent misleading health claims by snack makers, the Food and Drug Administration and the U.S. Department of Agriculture have redefined *healthy* and unleashed a full-fledged assault by the language police.

Beginning in November 1995, labeling regulations on fresh and processed meats, fruits, and vegetables will allow food manufacturers to describe their products as "healthy" only when each serving contains at least 10 percent of the Recommended Daily Allowance of vitamin A, vitamin C, iron, calcium, protein, or fiber.

Food makers must also limit levels of sodium, fat, and cholesterol in their "healthy" offerings. Even foods sold under such brand names as Healthy Choice and Healthy Request must conform to the guidelines. Firms that violate these rules could have their products seized by the government and face administrative fines.

Tim Willard of the National Food Processors Association says the agencies are using federal power to enforce the gentleman's agreement that manufacturers won't make unsubstantiated health claims about snacks. He sees no evidence that snack makers are trying to fool anyone. Yet FDA Chief David Kessler told *The Wall Street Journal* that "products such as diet soda or regular soda—things that don't have anything in them—shouldn't be termed 'healthy' just because they are low" in fat, sodium, and cholesterol.

John Cady, president of the NFPA, says that under the new guidelines, "such foods as green beans, raisins, and apple juice couldn't use the term *healthy*," even though health authorities recommend five servings of fruits and vegetables every day. ®

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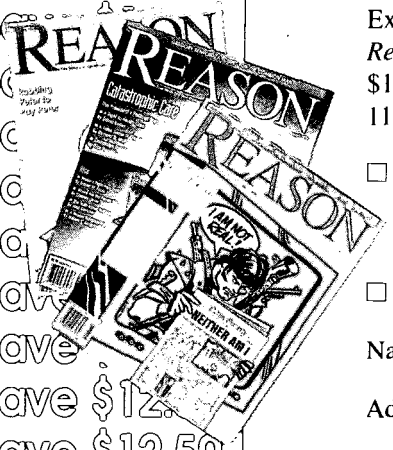

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Hailing Cabs

Taxi regulations fall in Denver and Indianapolis.

By Rick Henderson

IN DENVER AND INDIANAPOLIS, ELECTED officials have torn down decades-old taxicab regulations that soak consumers and hinder entry-level entrepreneurs.

On May 31, Colorado Gov. Roy Romer signed a bill that ends Denver's 47-year-old taxi oligopoly. Since 1947, the Public Utilities Commission had turned down every applicant who tried to compete with Denver's three taxi companies. (See "America's Economic Refugees," November 1993.)

Under the previous law, the PUC could deny new taxi licenses if the existing companies could show that competitors would harm current taxi firms in any way. The new law forces existing taxi owners to demonstrate that competitors would drive the current companies out of business.

The changes in Indianapolis are even more radical. Extending Mayor Stephen Goldsmith's plans to reinvent the Indianapolis government (see "Competitive Instinct," August/September 1993), on May 23 the City Council removed most restrictions on taxi licensing.

The city lifted the cap on taxi licenses, allowing anyone who passes vehicle and driver-safety tests to get a license. Cabs can now cruise for passengers instead of waiting at designated stands or taking reservations by phone. Cab drivers may charge any fare they choose below a ceiling set by the city. And the city will allow jitneys or van pools to run along fixed routes.

A 1951 ordinance prevented the city from issuing more than 600 taxi licenses. But the city has rarely given out even as many licenses as the law allowed. Since 1987, for instance, only 392 cabs have been licensed.

The new ordinance doesn't completely eliminate regulations; a price ceiling remains. But opponents of the measure appeared ready to allege that new cab owners would gouge consumers, and the ceiling helped neutralize this opposition.

The airport authority, an independent agency, can also regulate fares and limit the number of taxis that provide airport service. Tom Rose, a special assistant to the mayor, says he hopes city officials can work with the airport authority to keep access open.

Disabled residents will benefit immediately from the new ordinance. Until now, wheelchair-bound residents have depended on public transportation. Yellow Cab owner Richard Hunt told the *Indianapolis Business Journal* he will purchase 10 wheelchair-accessible vans and operate them as a jitney or van-pool service.

Lifting the cap on licenses should provide opportunities for entry-level entrepreneurs, many of them African Americans. The Hoosier Minority Chamber of Commerce and the *Indianapolis Recorder*, a black newspaper, backed the ordinance. When Goldsmith introduced the proposal last spring, the Indianapolis Urban League signed up two dozen African Americans who plan to apply for licenses. R

Denver taxi entrepreneurs: No longer blocked by law

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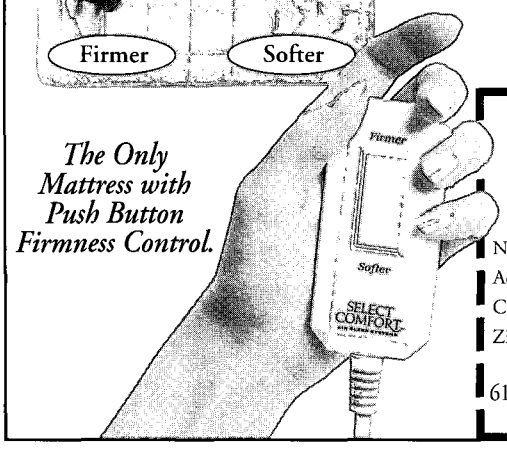

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Viva La Evolution!

Does a taste of free enterprise mean the end for Fidel's Cuba?

By Mack Tanner & Larry Grupp

SCOTT STANTIS

The Special Period

"Bring them to my house." She spoke in Spanish, her voice almost a shout. "Let them see my hungry children. Let them see the real Cuba." The angry, distraught woman appeared suddenly out of the crowd to confront the Cuban government guide shepherding a busload of Canadian tourists through the streets of Havana. In her mid-30s and wearing a worn, dirty cotton print dress, she was thin, but she didn't seem to be starving.

"Get out of here!" the guide told her. "Before you get in trouble!" He was embarrassed but not angry. He spoke in a quiet, sympathetic tone, sounding like he really was worried that a police officer might arrest the poor woman for committing one of the more serious street crimes in Havana today—doing anything that threatens the tourist industry. The woman, fear replacing the anger on her face, turned and walked away through a scattered crowd of Cuban pedestrians at a speed just slower than a trot.

"What was that all about?" a Canadian tourist asked the guide.

"Nothing," he said. "She is just a crazy woman. She should be in a hospital." As the tour guide brushed off the incident, he looked at Mack Tanner, the only foreigner in the group who spoke Spanish. Both men knew that the woman didn't have anything to give her children to eat that day. She wasn't crazy; she had been driven into anger by desperation and frustration—two emotions in great abundance in Cuba these days.

The people of Cuba are hungry, but they are not starving, at least not yet. They are doing without a lot of things—soap, shampoo, toilet paper, toothpaste, pencils, shoes, headache pills, vitamins, and even the single piece of meat per week for which they have ration coupons. The shortages interact and compound each other. Because of the frequent electricity blackouts, food in cold-storage plants and home refrigerators spoils. Even if a factory has raw materials, workers don't show up because the buses aren't running.

The Cuban economy has gone bankrupt, and every citizen in the country knows it. Fidel Castro has admitted it and has even given the bankruptcy a name, *La Estapa Especial*—the Special Period. His propaganda machine spins out explanations for why it has happened and promises of how the Cuban government is going to solve the problem. His treasury is so empty of foreign exchange that Fidel can't buy enough fuel and fertilizer to run his sugar industry, medicines for his much-touted health-care services, or shoes or uniforms for the children in his free educational system. Factories sit idle for lack of electric power, fuel for engines, spare parts, and raw materials.

The public transportation system runs at a snail's pace when it runs at all. People crowd bus stops in such numbers that special, unarmed marshals wearing yellow uniforms keep order and direct the loading of waiting passengers into whatever government vehicle comes along with empty space. Workers can spend as long as six hours a day traveling back and forth to their government jobs. Clerks in government stores sit in front of empty shelves. When a grocery store does get a delivery of food—most of the time a single item such as carrots or cabbages—a mob of customers instantly gathers outside. Many still stand there waiting when the shelves are once again empty.

While Castro and his government blame this economic disaster on the withdrawal of Soviet aid, the continuing American trade embargo, and the low world price of sugar, the plain fact is that the Castro government has failed because communism always fails. Rather than trying to prevent Americans from visiting Cuba, we ought to encourage as many as possible to go see what happens when a communist system absorbs a free-enterprise economy. Castro took over one of the most vibrant, developed economies in Latin America in 1959. He destroyed the capital formation mechanism and the market incentives of the economy, and the Cuban people have been eating their seed corn ever since. Soviet charity kept them going for a while but only delayed the inevitable. Now Cuba ranks with Haiti as the poorest of the poor in the Americas.

With the collapse of the Cuban economy and the possibility of real starvation in the near future, Castro and those around him have been forced to turn to the only thing that might save their economy: free enterprise. New laws make it legal for Cubans to hold and spend American dollars; rural families can once again sell the surplus they produce; and city dwellers can legally engage in single-owner private business enterprises. The Cuban political leaders have made a major investment in the tourist industry in an attempt to earn enough foreign exchange to keep the economy going. Cuban diplomats are scouring Europe, Canada, and Latin America, looking for capitalists willing to risk money in joint ventures in Cuban mining, petroleum, and manufacturing interests.

Vision of Failure

Interested in what happens when a communist society lets loose a bit of free enterprise and curious about what role, if any, the U.S. embargo has played in pushing Castro up against the wall, we decided to travel to Cuba. The U.S. embargo against Cuba, which has been in place since 1962, doesn't prohibit U.S. citizens from traveling there, but it does forbid Americans to spend any money on travel to Cuba. The penalties for breaking the law are severe: up to 10 years in prison and fines up to $250,000. The law allows exceptions for Americans traveling to visit their families, legitimate scholarly researchers, U.S. government officials, and news-gathering journalists.

Based on public statements by Cuban government officials about how eager they were to tell the story of the new Cuba, we expected getting visas as journalists would be easy. On September 30, 1993, we sent a fax to the Cuban Interest Section in the Swiss Embassy in Washington requesting visas. On November 10, we received a fax asking for more information about the publication we wrote for. We provided the information and mailed some back issues of REASON. We never heard another word about our visa applications.

We learned that a *Wall Street Journal* writer had waited more than four months for a visa, finally received one, then had it revoked a few days later after he made a speech in which he said something someone in the Cuban government didn't like. The unholy alliance between the U.S. Treasury Department, which enforces the embargo, and the Castro government officials who control visas for journalists ensures that most Americans who visit Cuba are inclined to ignore evidence of socialist failures

"Mr. Imperialists, we have absolutely no fear of you": This billboard looks across an intersection toward the Swiss Embassy where the American interest section is located. The sign and its backside were the only billboards displaying anti-American propaganda we saw on the streets of Havana. Castro's 35-year anti-American propaganda campaign has not translated into anti-American sentiment on the streets and rural roads of Cuba.

and accept propaganda blaming outside factors such as the U.S. embargo.

After verifying that we wouldn't be breaking U.S. law if we went to Cuba without telling Cuban immigration officers we were journalists, we joined a tour group of Canadian citizens. During our seven days in Cuba, we rode through several hundred miles of countryside and drove through the suburbs of Havana as well as the oil fields and the tourist resorts of Matanzas province.

Nowhere was the socialist failure more obvious than in the rural areas. Cuba has a rich agricultural base of fertile land, water resources, and a long growing season capable of producing up to three crops a year on the same land. The country could feed its population, without having to take sugar-cane land out of cultivation, if it had the market incentives that drive successful agricultural production.

Everywhere we drove through the countryside, we saw large numbers of people working the fields of collective farms with hoes or harvesting by hand. In some parts of the country, children go to school for half the day and work in the fields for half the day. But no matter how many people are sent to the fields, production continues to decline. Modern agriculture stands on three legs: high-yield seed varieties, chemicals, and mechanization. Human labor can take the place of machines, but it does nothing to alleviate shortages of high-yield seed and chemicals.

Larry Grupp, now a trained agricultural specialist, spent the summer of 1958 in Cuba, and he remembers seeing only one pair of oxen plowing a field. A Cuban friend pointed out the spectacle, noting that there were still a few farmers mired in poverty. On our recent trip we saw fewer tractors pulling plows than we saw teams of oxen. And every ox team we saw was tied to the plow by the horns. One of the more important inventions of the Middle Ages was the shoulder yoke, which doubles or even triples the amount of work a team of oxen can do in a day. Any carpenter can make an ox shoulder yoke in no more than an hour's time. Mack Tanner's wife, who is from Thailand, can make one out of bamboo, rope, and a couple of pieces of leather. Yet the bureaucrats who manage the collective farms of Cuba apparently are unfamiliar with such modern technology.

Speaking Freely

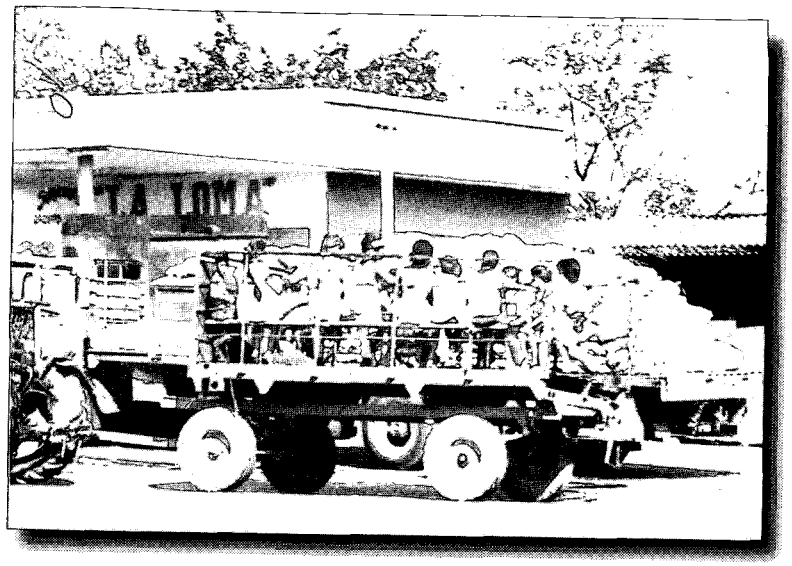
We met only one defender of communism during our visit, a taxi driver whom a hotel desk clerk called for us. Eduardo Gadea told us he grew up in New Jersey but went to Cuba in 1958 to fight for the revolution and has lived there ever since. He was driving a government-owned taxi, an air-conditioned 1983 Mercedes. It was the last day we spent in Cuba, and we suspect he was a government ringer sent to check us out because someone on the hotel staff suspected we might not really be tourists.

Castro's 35-year anti-American propaganda campaign has not translated into anti-American sentiment on the streets and rural roads of Cuba. During our trip we talked to dozens of different people, sometimes in conversations that lasted for several hours. Not once did we hear an anti-American statement. The Cubans proved to be the most friendly, easy to meet people we've encountered in years of traveling in dozens of different countries. Many of those we met talked so frankly that we have had to disguise their identities as well as the specific circumstances of our conversations.

The Cuban system of neighborhood snitches is still in place, and a Cuban can lose his job, forfeit his ration cards, and even go to jail if the wrong person hears someone say the wrong thing. "We're not watched all the time or spied on like Radio Martí claims," Antonio Salazar, a university graduate and high-school science teacher, told us. "We can do anything we want, as long as we don't break the law." He paused, thought a minute, then added, his voice suddenly sad, "One thing we can't do: We can't say how we feel out loud. That's what I miss most, being able to say how I feel out loud."

On our visit we saw no mobilized troops anywhere. There were no military or police checkpoints on the highways and no military personnel carrying weapons in public except for those guarding the entrances to military bases. The only tanks or armored personnel carriers we saw were parked deep in military compounds. Uniformed police were no more obvious than they are in most countries in the world, and less obvious than in some. By contrast, in the summer of 1958 even a 17-year-old like Larry Grupp could see the unrest and the coming revolution. Batista's

PHOTOS: MACK TANNER & LARRY GRUPP



Improvised public transit: The public transportation system runs at a snail's pace when it runs at all. People crowd bus stops in such numbers that special, unarmed marshals wearing yellow uniforms keep order and direct the loading of waiting passengers into whatever government vehicle comes along with empty space. Workers can spend as long as six hours a day traveling back and forth to their government jobs.

troops were everywhere, and the roads were punctuated with military checkpoints where soldiers waved automatic weapons as they searched vehicles for contraband.

Everywhere we went, we could see, feel, and hear the frustration and desperation of people trying to survive while an economy collapses. "Things were hard, but we could get by until about two years ago," said Antonio, the science teacher. "The rationing was tight—each person only got five pounds of rice a month and one piece of meat a week—but we could find the rice and the meat if we had the ration coupons and the pesos. Now I've got pesos and coupons, but I can't find food in any store. I can buy food on the black market, but a crate of 30 eggs costs 200 pesos. I make 230 pesos a month."

"So what's the solution?" one of us asked.

"The government is finally letting the farmers legally sell their surplus," he answered. "Now that they can make money, they'll grow more food. The prices will eventually have to come down." Antonio was born after the revolution. Dedicated communist professors taught him economics, but he understands how the free market works. "Let's hope they let the reforms last this time," he added, his voice worried. "There are a lot of people around Fidel who still believe socialism has all the answers. Before, the government opened the door a crack for the farmers, then slammed it shut again."

In the late '70s, a deteriorating economy forced Castro to legalize private farm production and small business enterprises. The result was a significant increase in food and consumer goods. But when a few people started making real money, Castro, who believes all profits are immoral, announced in 1984 a policy of "rectification," which again prohibited all private economic activity.

Castro must realize that releasing the free-enterprise genie threatens the long-term survival of socialism. He apparently thinks he can command the genie, but the government's past behavior indicates that he will move quickly when he suspects he's losing control. Many people in Havana recently started raising chickens on balconies and pigs in backyard pens for personal consumption or quick sale on the black market. In early March, the authorities in Havana rounded up 26,000 pigs inside the city limits, claiming they were doing so for public-health reasons. Every such crackdown can only increase frustration and further loosen Castro's grip on the soul of the nation.

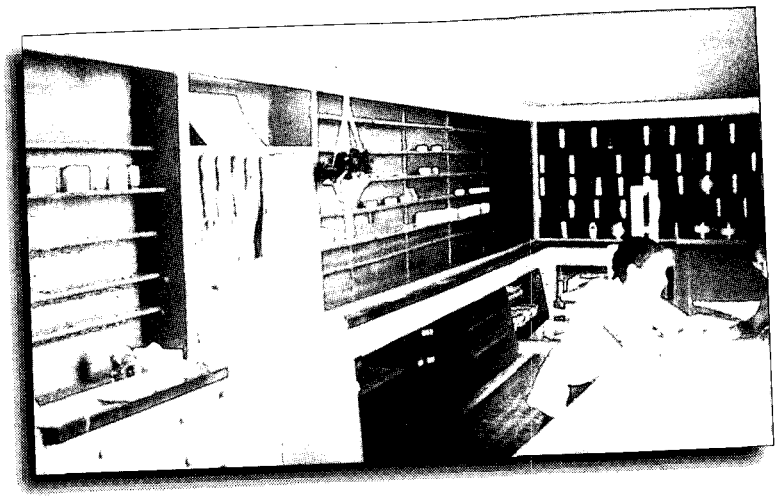
Collapsing Communism

"We can't let happen here what happened in Russia and Eastern Europe," Pedro Infante told us. Pedro dropped out of the university to follow his first love, music. Now he sings with a band in a luxury hotel on Verdadero Beach built with Spanish joint-venture money. "We have to take it a step at a time," he said. "We can't give up what we have gained with our revolution. We don't want crime like you have in America, and we don't want civil war like what is happening in East Europe." Pedro was parroting the standard government propaganda as explained on the Radio Progreso and Radio Rebelde broadcasts that we listened to every morning while in Cuba.

The electronic communication age has forced more honesty on government propaganda in Cuba. The big lie works only if people hear nothing else. Cuban government technicians may jam Radio Martí from Miami, but they can't block out the whole AM and FM dial. Commercial Florida stations broadcast in Spanish and English without interference, and even Rush Limbaugh and G. Gordon Liddy come through loud and clear on the northern Cuban coast.

A surprising number of Cubans can watch either CNN or the Spanish-language equivalent. Hundreds of small dish antennas, about three feet in diameter, decorate the roofs of houses and apartments located within a few blocks of the tourist hotels. Manufactured by backroom technicians and sold for around $100, the antennas catch and amplify the electromagnetic radiation that leaks from hotel satellite dishes and their connecting cables. Anyone who buys one gets to watch the same international channels the tourists watch in their hotel rooms.

So the Cuban government can't deny what has happened to socialist countries around the world. Cuban news commentators instead paint a dire picture of the political, economic, and social problems of the ex-socialist countries.



A nearly empty pharmacy: We talked to a hotel gardener using a machete to trim a grass lawn. One of his four children is asthmatic. "Our Cuban doctors are very good," he said. "But they have no medicine to give my daughter. Sometimes I can do something for a guest. Whatever tips I make, I give to a friend who works in the hotel infirmary. She sells me the medicine for my daughter."

While some foreign observers of the Cuban scene were predicting a year ago that Castro would soon be on his way out, we saw no evidence that it is about to happen. Hungry, desperate people who are struggling to survive don't make revolutions. Rather than plotting to change the government, the people we met were spending their energy trying to solve immediate personal and family problems. Besides, the communists have so totally failed to fulfill their promises that the Cuban people have lost all faith in any kind of government and in revolution as well.

Nor will the U.S. embargo change this picture. The State Department takes the position that the American embargo must be enforced until basic human rights are restored in Cuba, there are free elections, and Cuba compensates U.S. citizens for the properties seized more than 30 years ago. The assumption of the policy is that somehow the embargo will force those things to happen. Yet there's little reason to believe the embargo has ever had or is likely to have any significant impact on the internal politics of Cuba, other than by providing a scapegoat to blame for the country's economic misery.

Ending the embargo would have little immediate impact on the Cuban economy. Since the United States is the only country in the world that refuses to sell products to Cuba or that forbids its citizens to travel to or invest in Cuba, there is nothing that Castro can't buy in the international market, provided he has the foreign exchange to pay for it. U.S. trade and tourism might accelerate the government's accumulation of foreign exchange, but it would also put more dollars in private hands, as the tourist trade is already doing. That might be the most seditious development we could encourage in Cuba. People spending their own money for things they want don't make good socialists.

Just about every Cuban we talked to wanted to know why the United States insists on continuing the embargo and what the Americans hope to gain. They were more puzzled than angry. No one we met was prepared to risk his or her life trying to achieve reform and free elections so the Americans will end the embargo. And it seems that the U.S. demand for free elections is inconsistent with the demand that Cuba compensate the owners of expropriated properties. The Cubans we talked with would not vote for politicians who would divert scarce foreign exchange to pay off debts for something that happened before most Cubans were born.

"We are not going to allow a bunch of Cuban expatriate millionaires in Miami to tell us how to run our country," Pedro Infante told us. "How dare they threaten foreign investors with the future confiscation of their investments. If they think they can come back to Cuba after all these years and take over again, they are crazy." The Cubans we met who had relatives living in the United States were less inclined to criticize "millionaire Cuban expatriates," but they were no more willing than Pedro to follow political guidance from the Cuban-American expatriate community, especially if such guidance put their lives at risk.

While a lot of Cubans, probably the great majority, don't like the government, it seemed to us that a viable opposition is not likely to develop, even if things get worse than they already are. Nevertheless, frustration is so widespread that things could suddenly explode in a spontaneous outburst of frustration and anger such as the unrest in the Philippines when Marcos fell, in Tiananmen Square in China, or in Romania. Castro must recognize that danger. His recent reluctance to appear in public and the decision to cancel this year's May Day celebration suggest he fears that any crowd of people in Cuba could suddenly go on a wild, anti-government rampage like the one that brought down Ceausescu.

Castro isn't just keeping a low profile; he's almost invisible. Listening to Cuban radio stations or watching a Cuban television channel every chance we got, we never heard his voice or saw a video clip or photo of him. To our surprise, there were no pictures of Fidel in the classrooms of the school we visited. We saw only one picture of Fidel in the hundreds of homes, shops, and offices we walked by in our strolls through the streets. One sees more pictures of the independence hero, José Martí, than of Castro. Several different sources confirmed this was not how it used to be. One source suggested that the pictures of Castro had been discreetly removed because so many of them were being defaced.

A licensed vendor makes hats from palm leaves to sell to tourists: On Saturday, the plaza in front of the old Cathedral of Havana is filled with artistic entrepreneurs selling their souvenirs from small stands. As we stood and watched, we spotted a government official moving from stall to stall, making sure that each vendor had a license to do business.

Castro's public absence produces a continuing rash of rumors that he is either sick, injured, or no longer around. On the day we left, we heard a rumor from two different sources that Fidel had suffered a stroke a few days previously. In fact, he was not only well, he personally hosted a reception for a group of Cuban exiles who had been invited back to Cuba for a conference on immigration.

Come Back to Cuba

As tourists, we could go just about any place we wanted, take pictures of anything we saw except military personnel, and talk to anyone who would talk to us. In Cuba, the tourist can do no wrong. More than 600,000 tourists visited Cuba last year, and tourism may already be bringing in more foreign exchange than the sugar industry. Cuba is attracting customers by making sure the tourist gets first claim on every commodity and service. While meat is a rarity for the average Cuban, tourists get all they can eat. Telephone calls from hotels get priority, so it's surprisingly easy for a tourist to call overseas.

The only kind of money tourists can use in Cuba is the U.S. dollar. Travelers from the rest of the world must exchange their own currencies for dollars to buy things in hotel shops, fancy bars, nightclubs, and restaurants, or to rent a car or hire a taxi. This is a case in which the good money chases out the bad. While the Cuban peso is still exchanged at an official rate of one to one, the black-market rate was running at 100 to one the week we were in Cuba. Since Cubans are now allowed to legally own and use dollars, any Cuban selling any good or service to a tourist demands payment in dollars. Cubans can use dollars to buy scarce items on the black market and in government stores ordinarily reserved for tourists or VIPs.

Everyone wants a job in the tourist industry, where you can earn tips in dollars. College graduates wait tables, mix drinks, and clean rooms. English professors and high-school teachers serve as desk clerks and tour guides. A year ago, Carlos Encinas, a graduate of the University of Havana with a degree in chemistry, was working in a government biochemical laboratory that raised sterile (disease-free) rats for sale to research facilities in other countries. Now he works in the kitchen of a resort hotel as a cook's helper. While that entry-level job doesn't give him much chance to earn tips, it puts him inside the hotel compound with some direct access to tourists and a chance to move into a job that will give him more opportunity for tips.

Mario Díaz worked for 20 years as a heavy-equipment operator at a sugar factory. Now he works as a gardener in a Havana hotel. When we talked to him, he was using a machete to trim a grass lawn. One of his four children is asthmatic. "Our Cuban doctors are very good," he said. "But they have no medicine to give my daughter. Sometimes I can do something for a guest. Whatever tips I make, I give to a friend who works in the hotel infirmary. She sells me the medicine for my daughter."

Marta Garza, a hotel maid, had a similar story. "I took my father to the hospital last week," she told us. "The doctor told us he had to take an antibiotic drug, but that the hospital didn't have it in store. The doctor wrote out the name of the medicine, and I had to go buy it on the black market. Because I work in the tourist trade, I had the dollars to buy it. Otherwise, my father would have died."

In addition to jobs in the hospitality industry, the influx of tourists has created opportunities for entrepreneurs. Juan Barquín quit his job as a computer programmer to become one of the new, legally registered entrepreneurs. He sells his paintings and sculptures out of a small shop near the old Cathedral of Havana. The work is of professional quality, which is why Juan got his license even though college graduates are supposedly prohibited from working as entrepreneurs. On Saturday, the plaza in front of the cathedral is filled with artistic entrepreneurs selling their souvenirs from small stands. As we stood and watched, we spotted a government official moving from stall to stall, making sure that each vendor had a license to do business.

While the best business is selling to tourists for dollars, other small-scale entrepreneurs are trying to meet the local demand for consumer goods. These entrepreneurs, who deal in pesos, sell their homemade wares from small tables and stands that are often set up in front of government stores with empty shelves. Except for farmers selling from the roadside in rural areas, there are

Left: A vendor refills and sells disposable butane lighters.

Right: A vendor waits for peso-spending customers.

no food products for sale on the legal private market. Most of the merchants were selling small plastic products like cups, pieces of costume jewelry, cooking pans, simple toys, combs, and small art objects.

One of the vendors was refilling disposable butane lighters. We watched as he took the top off a lighter, checked the flint, then squirted a shot of butane into the tank before putting it all carefully back together. He kept his supply of butane in what had once been an aerosol can of insecticide.

The Black Market

The Castro government brings tourists in with cheap packages, then fleeces them when they want something extra. A lunch of roast chicken and black beans with rice at La Bodegita cost us $40 for two; a daiquiri at La Floridita was $3.00. A box of the better Cuban cigars can cost $70 or more in a government store. An evening at the Tropicana Night Club cost $70 without the drinks. A taxi ride from our hotel into the city, a distance of about 20 miles, cost $30 each way. Car rentals start at $70 a day.

A thriving black market offers the tourist some of those things at bargain rates. A tourist can't walk more than a block along a street in Havana without meeting at least one black-market merchant offering to sell cigars, rare coins, a private taxi, a meal in a private home, or a date with whichever sex one might prefer. Pedro Aguero works as a porter in a tobacco factory, but we met him in the middle of the afternoon on a Havana street, where he quoted a price on a box of Monte Cristos that was less than half what we would have paid in a tourist store.

From what we could see and hear, most of the consumer items sold on the black market have been stolen or diverted from government distribution channels or from one of the non-government charities supported by U.S. voluntary agencies that are permitted to make shipments under the embargo. Even so, the black market offers a much wider variety of goods than the newly legal entrepreneurs do, including such hard-to-find items as medicine, bicycles, and gasoline.

Still, there is no guarantee that anything will be available on the black market, even if you have dollars. We needed a car for a day, and we found the owner of a well-kept 1953 Chevy that would be worth a small fortune at an antique car auction in the United States. He agreed to take us where we wanted for half the price it would cost us to rent a car. The deal fell through when he couldn't find any gas for sale even though he had both coupons to buy legal gas and dollars to buy black-market gas.

Walking back to our hotel one afternoon, we encountered another thriving part of the black market. We were joined by six schoolchildren, who followed along, talking and singing English-language songs they had learned in school to entertain us. Just before we reached the hotel, two young women walked up to our group and identified themselves as the mother of one little girl and the aunt of three of the other kids. They were hoping we might invite the two of them into the hotel for a romantic evening—in exchange for dollars, of course.

The Cubans call them *jineteras*, a play on the Spanish word for jockey. Any male tourist who strolls outside his hotel will meet several of them, even if that's not what he's looking for. They work only for dollars, but they will happily accept tips of surplus aspirin, shampoo, old T-shirts, or anything else a tourist is willing to leave behind.

The aunt, Hortensia, an outgoing brunette, obviously had some experience in her new profession. Dalia, a reserved blond, acted nervous and embarrassed. Unlike Hortensia, she didn't joke about the possibilities that might develop if we invited them to accompany us back to the hotel. When asked, Dalia shyly admitted that she is married. Her husband works in a chicken slaughterhouse, making 150 pesos a month, plus one small package of chicken scraps and chicken fat. If Dalia met a tourist who liked her, she could make more in one night than her husband makes in six months. We spotted both the women later in the evening as they sat with a group of Spanish tourists, drinking Cuba *libres* by the pool. Dalia looked at one of us and blushed for a moment before turning away.

Breaking Away

Any Cuban holding American money is permitted to shop in government dollar stores that serve both the tourist industry and the

Cars sit idle: We needed a car for a day, and we found the owner of a well-kept 1953 Chevy that would be worth a small fortune at an antique car auction in the United States. He agreed to take us where we wanted for half the price it would cost us to rent a car. The deal fell through when he couldn't find any gas for sale even though he had both coupons to buy legal gas and dollars to buy black-market gas.

diplomatic trade. In the hotels, the dollar stores are small shops that carry suntan lotion, film, medicine, soap, and rum drinks. Bigger dollar stores outside the hotels sell cookies, candy, imported cigarettes, and other consumer goods.

Opening these stores to ordinary Cubans is part of the government's attempt to collect as many dollars as possible. Tourist dollars may circulate through several hands, but most eventually end up in the government bank to pay for more government-sponsored imports. Although we saw no signs of a black-market trade in smuggled goods, as more dollars flow into private hands, a smuggling industry may develop to serve an expanding demand for the consumer goods—jeans, cosmetics, musical recordings—that a socialist government will not buy with scarce foreign currency.

In May, recognizing the potential threat that a black market poses to his efforts to collect all foreign earnings, Castro announced a new law providing for the confiscation of goods acquired by illicit means. He did not explain how he expects to enforce such a law. Castro may think he's going to continue to use the dollars he earns from tourism to buy supplies and equipment for the military, the bureaucracy, and state-run industries, but the people with dollars in their hands will make other choices if offered the opportunity. In this connection, the embargo does Castro a favor. It puts the U.S. Coast Guard on his side in preventing the development of a smuggling trade in consumer goods between Florida and the Cuban coast.

If the Cuban people survive this Special Period, if they eventually succeed in turning away from a discredited 19th-century economic philosophy that has failed every time it's been tried, it won't happen because of a violent change in the Cuban government. It won't happen because of the American embargo nor anything else American diplomats might try. It will happen because people like Antonio Salazar, Pedro Infante, Marta Garza, Carlos Encinas, Juan Barquín, and even the friendly *jineteras* stop waiting for the government to provide them with every necessity and instead do whatever has to be done to make their own lives better.

The Cuban people need a democratic government, but they also need a viable economy. Every one of the people we talked to in Cuba would pick more economic freedom over more political freedom. They will risk jail by dealing in the black market but not by playing politics. And there is strong evidence that free, democratic government can thrive only in a prosperous economy. That's how it happened in ancient Greece, in England, in colonial America, in modern Europe, and in Japan; that's how it's happening in places like Thailand, Korea, Taiwan, Mexico, Argentina, Brazil, Poland, and the former Czechoslovakia.

The meanest thing we could do to Castro would be to unleash an invasion of American tourists on his island. The dirtiest trick we could pull would be to close our eyes to the smugglers who will sneak U.S. consumer goods into Cuba to trade for the dollars the tourists leave behind. The embargo inhibits the kind of people-to-people exchange that might encourage more free enterprise in Cuba, and it gives Castro an excuse for the failure of socialism. Furthermore, it sets precisely the wrong example for people struggling under the burdens of socialism. In a free society, the government doesn't tell people where they can go or how they can spend their money.

If the embargo has any impact on the Cuban economy, it accelerates the flow of refugees rather than altering the country's internal politics. In Cuba, the politically discontented don't risk their lives to make war on the government. They risk their lives in small boats on 90 miles of open water.

During our trip to Cuba, Emilio Baeza, a hotel assistant manager, learned that his sister-in-law, her husband, and their three small children had arrived safely in Miami after six days in an open boat. "I can understand why he did it," Emilio told us, obviously relieved that his wife's relatives were still alive. "I don't criticize him for taking his family on that boat, but I couldn't risk the lives of my children like he did. Better we stay here. Things have to get better." ®

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ENGLER'S ANGLE

HOW TAX RELIEF BECAME SCHOOL REFORM IN MICHIGAN

BY DEREK GREEN

HENRY PAYNE

For many years, Michigan was like most other states when it came to public-school reform: There was a lot of talk, a little legislation, and no real progress on the issue. Even after the Kalkaska School District in northern Michigan made national headlines in 1993 by going broke and closing its schools partway through the academic year, legislators still couldn't find the wherewithal to overhaul the state's inefficient and widely despised 100-year-old system of funding education through property taxes. Property taxes were a major problem in their own right: They increased three-fold from 1972 to 1992. And because there were no assessment caps in place, local governments could raise property taxes with relative ease.

"You can't imagine the level of frustration in this state," says Bob Wittmann, director of education policy at the Mackinac Center for Public Policy, a free-market think tank in Midland, Michigan. "The frustration was felt by everyone. No one liked the status quo, but every time someone tried to do something about it, something went wrong."

The frustration—and desperation—in the governor's office was especially keen. First-term Republican John Engler had squeaked through his 1990 election with a victory margin of one percentage point, campaigning on a platform loaded with tax relief and school reform. But after three years in office, Engler and company had nothing to show for their efforts. And with re-election worries on the horizon, few believed that education or tax reform would come to Michigan any time soon.

Last July, however, everything suddenly changed. In a 24-hour blaze of lawmaking, Michigan legislators stunned even themselves by passing a controversial bill abolishing the practice of funding schools with property taxes. By the end of December, a bipartisan package of school-finance plans and education-quality reforms had passed both houses and gone to the governor's desk for signing.

Somehow, in less than six months, Michigan's leadership had managed to reverse a quarter century of bitter partisan gridlock, dramatically changing the way schools will work in their state and, many are saying, providing a model for public-school reform across the country—one that includes a charter-school provision incorporating significant elements of school-choice logic. It's a story of political hardball and genuine bipartisan achievement that provides a lesson for every state faced with education reform.

LAST JULY, MICHIGAN LEGISLATORS STUNNED EVEN THEMSELVES BY PASSING A CONTROVERSIAL BILL ABOLISHING THE PRACTICE OF FUNDING SCHOOLS WITH PROPERTY TAXES. BY THE END OF DECEMBER, A PACKAGE OF SCHOOL-FINANCE PLANS AND EDUCATION-QUALITY REFORMS HAD PASSED BOTH HOUSES AND GONE TO THE GOVERNOR'S DESK FOR SIGNING. IN LESS THAN SIX MONTHS, MICHIGAN'S LEADERSHIP HAD REVERSED A QUARTER CENTURY OF BITTER PARTISAN GRIDLOCK, DRAMATICALLY CHANGING THE WAY SCHOOLS WILL WORK IN THEIR STATE AND, MANY ARE SAYING, PROVIDING A MODEL FOR PUBLIC-SCHOOL REFORM.

Described by *The New York Times* as "the nation's most dramatic shift in a century" in public-school funding, the new plan essentially transfers the burden of paying for schools in Michigan away from local property taxes to an increased state sales tax and other existing levies. In addition to changing funding sources, the plan addresses the amount spent per student. Every district is guaranteed funding no lower than its 1993 budget, and all districts will now spend at least $4,200 per student, a $1,000 increase over the previous minimum.

A more controversial—and ultimately more significant—provision of the plan allows the creation of "Public School Academies," or charter schools. These "schools of choice" can be established by various entities, such as parent-teacher associations, school boards, departments of state government, and nonprofit organizations.

Michigan is unique among states experimenting with charter schools because it has set no limit on their number. Supporters say the move will provide "borderless options" for parents and students unhappy with their own school districts, and spur much-needed innovation in a school system overgrown with regulation and bureaucracy. And because it introduces a significant element of competition into the state's public schools, the charter-school provision acts as a hedge against the spread of uniform mediocrity. When local property taxes largely determine the amount of money spent per student, there are typically good, well-funded schools and bad, poorly funded ones. But state-level funding often means running the risk of losing the good districts where taxpayers feel they are at least getting what they pay for. Competition for students means that good schools will continue to be rewarded and bad schools will either improve or go out of business.

"The system was in desperate need of improvement and flexibility," says state Treasurer Douglas Roberts who, as the official charged with rewriting the state's tax code, was greatly responsible for shaping the reform plan. Michigan's schools, by the state's own reckoning, were doing badly. Per-student school

spending in real dollars had increased over 100 percent between 1982 and 1993, but there was little to show for the extra money. District spending per student varied by as much as $7,000, but students statewide scored abysmally on proficiency exams: 62 percent of 10th-graders were found to be deficient in reading; 77 percent performed below grade level in math; 54 percent of 11th-graders did not have acceptable science knowledge. "Not only did the issue of [funding] inequities have to be addressed," says Roberts, "but we had to find a way to inject market-like competition into the system. Something simply had to change."

That change finally came as the result of the toughest political struggle in recent Michigan history. It was a fight that had been brewing for more than two decades, drawing in politicians who had run out of places to hide, citizens fed up with one of the most burdensome property-tax systems in the nation, and powerful lobbying groups determined to protect their interests in the educational status quo. After the first few rounds, the fight became a showdown between an increasingly desperate governor and a deeply divided state legislature.

GOV. JOHN ENGLER: TO EVERYONE'S SURPRISE, HE CHAMPIONED THE DEMOCRATS' PLAN TO ELIMINATE PROPERTY-TAX FUNDING OF SCHOOLS. "THE PROBLEM WITH EDUCATION [REFORM] HAS BEEN THAT WHEN YOU TRY TO APPROACH IT PIECEMEAL, TO BRING ABOUT INCREMENTAL CHANGE, THE INERTIA OF THE STATUS QUO IS JUST SO DIFFICULT TO OVERCOME THAT IT REALLY DOES WEAR YOU DOWN."

The level of discontent in Michigan over property taxes and education financing can be gleaned from the number of ballot proposals dedicated to reform. Between 1972 and 1992 there were 11 state ballot proposals either to reform school finance or to reduce or abolish property taxes. Although all of the ballot initiatives failed—some by margins of 60 percentage points or more—there was continuing resentment at Michigan's disproportionately high tax burden: The state ranks eighth-highest in taxes in the country, even though it ranks only 15th in income. Most political observers attributed Engler's 1990 gubernatorial victory to his strong anti–property-tax stance.

But after taking office, Engler had come nowhere close to making good on his ambitious promises to cut taxes. His administration had proposed two more ballot measures, both of which had gone down at the polls. The second defeat, in June 1993, was especially alarming for Engler because prominent Democratic and Republican pols had supported the measure, which would have cut property taxes by 20 percent. In fact, even the Michigan Education Association, the most powerful state teachers' union in the nation and Engler's bitterest enemy, had offered lukewarm support.

But while voters desperately wanted tax reform, they weren't willing to sign on to any plan put in front of them. Deputy Treasurer Nick Khouri notes that the ballot proposal addressed neither the issue of lost revenue nor the cause of school reform. Voters were afraid that any cut in property taxes would simultaneously destroy the schools and be replaced by a huge boost in the state income tax. Khouri says voters were telling their representatives, " 'We aren't going to decide this for you.' It was an unsustainable situation."

With elections looming in 1994, the Republicans decided to play rough. In July, backed by Engler, Michigan Senate majority leaders introduced a statutory bill to cut property taxes 20 percent across the board. Even though no provision was made to recoup the lost revenue, Republicans had the votes to ram it through the upper chamber. But since the House was split evenly between Democrats and Republicans (each party held 55 seats), it was not expected to survive there.

After a series of dead-end talks between the governor and Senate majority and minority leaders, the Democrats made a surprising offer: They wouldn't support the 20-percent tax cut proposed by Republicans, but they might consider going along with an amendment that abolished *all* property taxes. Debbie Stabenow, a Democratic state senator who is challenging Engler in Michigan's gubernatorial race this fall, proposed the new amendment on July 19.

Why would a Democratic senator introduce such a Republican-sounding proposal? Stabenow says she did it because someone had to "break the issue loose. We had incredible inequities in schools and we had the knowledge of how to fix the problem—but we didn't have the political will."

Stabenow believes it was "the lesser of two evils" to abolish all property taxes rather than to go along with the 20-percent cut proposed by Republicans, even though neither plan made provisions for replacing lost revenue. If the legislature completely dissolved the tax base, says Stabenow, they would have to admit the need for a complete overhaul of Michigan's out-of-control finance and education situation. To force the issue, the Democrats'

plan set a deadline of the 1994–95 school year for implementing a new way of funding schools.

Others question Stabenow's motives and suggest that pre-election year posturing and political one-upmanship might have played their own large roles. "Maybe in her heart of hearts [Stabenow] thought abolishing property taxes, even given the risk of anarchy, was worth it to get the legislature moving," says the Mackinac Center's Wittmann with a smile. "In a sense, you can commend her. But is that what she was really doing?"

One reason the question nags people is the enigmatic, behind-the-scenes role played by the Michigan Education Association, Michigan's powerful branch of the national teachers' union. Few can imagine that Democratic lawmakers would propose such a radical piece of education legislation without first seeking the group's approval. In Stabenow's own account, the MEA's chief Michigan lobbyist, Al Short, was kept apprised of developments on the night the Democratic leaders came up with their counter-proposal.

But Short denies that he supported any tax-cut plan that didn't provide back-up revenue for the schools. "In the Senate they took up the 20-percent [property tax] reduction with no replacements," he says. "Then Stabenow says maybe we should cut all taxes, also with no replacements. No one wanted replacements. I was caught off guard." The MEA's role is clouded further because of remarks Short made on July 20 to a Lansing news service that suggest he indeed approved of the plan. Short's waffling strengthens speculation that Stabenow's cloakroom strategy was a ploy to out-shine Republicans on the tax issue.

Julius Maddox, the MEA's charismatic president, forcefully rejects the suggestion that his organization signed off on Stabenow's plan. "I was not there that day," he says. "What I can tell you is that prior to that time, our position had been clearly articulated to the legislature. Our position did not change. If [state legislators] thought there had been a radical change in our position, it would seem to me that they would have checked with the president. This literally happened overnight."

For a few hours that night, it appeared that Stabenow's proposal had checkmated the Republicans. They could reject it and appear to have voted down a more comprehensive tax-cut measure than their own. Or they could support a Democratic initiative and run the risk of falling short of votes from their own party. Worse, if the proposal passed, the issue of replacement school funding—which most likely meant some very unpopular tax increases—would blow up in the Republican governor's lap.

STATE SEN. DEBBIE STABENOW: WHY WOULD A DEMOCRATIC LEGISLATOR INTRODUCE A REPUBLICAN-SOUNDING PROPOSAL TO ABOLISH THE PROPERTY TAX? STABENOW SAYS SHE DID IT BECAUSE SOMEONE HAD TO "BREAK THE ISSUE LOOSE. WE HAD INCREDIBLE INEQUITIES IN SCHOOLS AND WE HAD THE KNOWLEDGE OF HOW TO FIX THE PROBLEM—BUT WE DIDN'T HAVE THE POLITICAL WILL." OTHERS SUGGEST PRE-ELECTION POSTURING MAY HAVE PLAYED A ROLE.

But to everyone's surprise, Engler championed the offer. Meeting with Republican leaders, he developed a strategy in which Senate Republicans would support the bill in the Senate, and House leaders in both parties would expedite its passage in the lower house. If there was any lingering confusion on the MEA's position, it disappeared as soon as Engler made it known that he would accept the Democratic plan. Early on the morning of July 20, a note personally signed by Julius Maddox appeared on every desk in the house, urging legislators to reject the plan. But by then it was too late to stop the proposal.

"It's a game I've seen all too often since I arrived in Lansing," says Rep. Lynn Rivers, who as party whip was one of only 35 House Democrats who resisted the plan. "It's the game of giving you what you want. It's like playing chicken on the highway. Except you don't play chicken with someone who's willing to crash and burn. John Engler is just that kind of politician."

The proposal opened the way for reform and provided wide tax relief—a big score for Republicans in general and John Engler in particular. But it presented them and their Democratic counterparts with another, more serious problem: No one had yet proposed, let alone conceived, a back-up funding plan for the schools. That meant that the state's lawmakers had less than a single school year to find the $6.2 billion they had just removed from the public-school revenue base.

"It would have been impossible for the Republicans to get something like this through alone," says the Mackinac Center's Wittmann, summing up the strange episode. "Everyone would have claimed they were nuts for not proposing some alternative way to finance schools. But when a Democratic senator proposed the legislation, then they were part of it too. They had *all* gone nuts."

Editorials across the state criticized the governor and the legislature for the unprecedented move, accusing them of enacting a cynical, politically expedient compromise that made hostages of the state's children. One political cartoon showed a portly John Engler falling from an airplane while frantically knitting himself a parachute. On September 1, *The Washington Post* criticized the Michigan plan in an editorial called "Honey, I Blew Up The Kids!"

In many ways, John Engler is the last governor you'd expect to be at the center of so much controversy and behind one of the most revolutionary pieces of state legislation in the country. A bland career politician (asked why he personally dedicated himself to education reform, he begins, "I've spent a lot of years in public service"), Engler doesn't exude the sort of charisma that inspires either blind loyalty in supporters or fear in opponents. In an age of MTV politics and jogging presidents, Engler's bulky frame and slight lisp cut the figure more of a 19th-century pol than a 21st-century policy wonk.

Detractors are quick to criticize Engler for what they see as a slash-and-burn approach to policy making. Provoking legislative crises is "a silly way to run government," says James Agee, a first-term Democrat in the state legislature. "Is that the way we ought to make our laws? Let's close the hospitals tomorrow, create a crisis, and then solve health care."

But the governor's supporters claim that beneath Engler's jejune exterior is one of the shrewdest political minds in the United States. By way of example, they point to his handling of the July property-tax showdown, a deft move in which he simultaneously neutralized his primary political rivals and created a windfall for himself and his party. Engler also understood that the legislative crisis gave him the chance to address not just how schools were funded but also how they might be remade.

State Treasurer Doug Roberts says Engler emphasized those two points when formulating the plan. "We had a vast amount of money to recoup," he says. "But that was just one part. The governor kept saying that wasn't enough. He stressed that we had an opportunity to fundamentally change the system. He said over and over that he wanted something that would change itself over time."

TREASURER DOUG ROBERTS: THE LEGISLATIVE CRISIS GAVE ENGLER A CHANCE TO ADDRESS NOT JUST HOW SCHOOLS WERE FUNDED BUT HOW THEY MIGHT BE REMADE. "WE HAD A VAST AMOUNT OF MONEY TO RECOUP. BUT THAT WAS JUST ONE PART. THE GOVERNOR KEPT SAYING THAT WASN'T ENOUGH. HE STRESSED THAT WE HAD AN OPPORTUNITY TO FUNDAMENTALLY CHANGE THE SYSTEM. HE SAID HE WANTED SOMETHING THAT WOULD CHANGE ITSELF OVER TIME."

Engler's original goals for school reform were even more far-reaching than the plan finally enacted. They included the charter school provision; inter-district public-school choice, with funding following each student; new discipline measures and report-card procedures; multi-tiered school-accreditation procedures; the development of a core curriculum in math, reading, and science; and the implementation of a fast-track teacher certification program.

The governor himself describes his strategy with a typical lack of animation. "When we put [everything] on the table, it brought everybody into the room," says Engler. "We swept the slate clear so no one was in a position to defend the status quo, because there was no status quo. It was gone."

No status quo also meant nowhere left to run. So in August, Engler created a task force to draft a legislative proposal that had to rewrite the Michigan tax code, create a system for the state-wide allocation of school funds, and improve the fundamental quality of public education. The governor also set a tight deadline for this proposal: October 1.

In retrospect, says Deputy Treasurer Khouri, drafting a plan in two months was the easy part. Passing the bills was infinitely more difficult, taking until the very end of 1993. Time was of the essence, however, because of the legislature's "immediate-effect law." That law specifies that any spending bill not passed by the end of a year must get a two-thirds vote to be put into effect. The supermajority requirement would have meant a small minority could control any revenue-replacement legislation that went into overtime. Neither Engler nor legislators relished the prospect of raising taxes or repealing their own summer legislation to keep schools from becoming insolvent.

"They would have looked ridiculous," observes the Mackinac Center's Wittmann. "Election time was on everybody's mind. And it's always easier to get votes for a tax cut than for an increase. In the end, they were in the boiling pot together and no one wanted to get cooked."

In the history of Michigan, the state legislature had never met after December 15. But session for the school finance and reform bills began at 10 a.m. on December 23 and continued

EDWARDS PHOTOGRAPHY

through the entire evening and next morning. When it finally ended shortly after noon on Christmas Eve, 22 new bipartisan bills had been drafted, debated, and passed.

"I'll never forget it," says Dick Posthumus, Senate majority leader and a close ally of Engler's. "It's probably the hardest work I've ever done in my life. For about two weeks everyone had been getting by on three or four hours' sleep, and for the last two days we went something like 48 hours straight to work out the most complex issue we'd ever faced. It was difficult but very, very successful."

Deputy Treasurer Khouri agrees. "It was a long all-nighter," he says. "The culmination of a lot of long nights. But that's probably how it should be. We knew we were doing something historic. We didn't know whether history would think it was smart or dumb, but we knew it was history. That makes it worthwhile."

Some recall the evening less warmly. "In many ways it was a joke," says Democratic whip Lynn Rivers. "We had no staff, there was no analysis of the bills—people were voting in some cases on legislation they hadn't had time to read. After 26 hours, all people were talking about were their plane tickets home."

Rivers, who is running for Congress, believes that a last-minute vote should have been avoided. "The main reason it came to this," she says, "is because the governor understands that the tighter the time line, the more leverage he has. Unfortunately, good public policy might have been lost in the shuffle." Rivers worries that legislators did not have adequate time to fully read the legislation they passed, much less consider its long-term implications.

Engler signed the legislation that came out of the marathon session on the last day in December. The compromise that had been reached offered two different plans, both of which reinstated a small portion of the property taxes eliminated in the summer. The first plan, introduced by the Republicans, sought to increase the state sales tax from 4 percent to 6 percent. Under the Democratic-supported alternative, the state income tax would go from 4.6 percent to 6 percent. Although not as ambitious as Engler's original proposals, both bills included nearly identical school reform measures, such as charter schools and a standardized core curriculum for all publicly funded schools.

DEPUTY TREASURER NICK KHOURI: THE SESSION TO DRAFT AND PASS THE SCHOOL BILLS BEGAN AT 10 A.M. AND CONTINUED THROUGH THE NEXT MORNING. "IT WAS A LONG ALL-NIGHTER. THE CULMINATION OF A LOT OF LONG NIGHTS. BUT THAT'S PROBABLY HOW IT SHOULD BE. WE KNEW WE WERE DOING SOMETHING HISTORIC. WE DIDN'T KNOW WHETHER HISTORY WOULD THINK IT WAS SMART OR DUMB, BUT WE KNEW IT WAS HISTORY. THAT MAKES IT WORTHWHILE."

Since Michigan law requires a constitutional amendment to raise the sales tax, there was one final dramatic gesture to be made: a statewide vote to decide the matter. If voters turned down the Republican-backed sales-tax increase ("Proposal A" on the special ballot), the Democratic income-tax proposal, which was a statutory amendment, would automatically go into effect. In the words of one Michigan representative, the voters got to choose between being shot or being hanged.

Still, many observers credit Engler with perceiving that the only way to pass a piece of legislation this sweeping was to force voters to choose between a sales tax and an income tax. He believed all along they'd opt for the sales tax. "I felt that for 20 years, people in this state have proposed higher income taxes *and* higher property taxes," says Engler. "People always said they would consider trading [lower] property taxes for higher sales tax. I thought it was a good bet."

On March 15 this year, Michigan voters went to the polls to decide on Proposal A, which was essentially the Engler plan. It passed by a margin of nearly three to one. The new law raises the sales tax by 2 percentage points, increases the per-pack tax on cigarettes from 25 cents to 75 cents, and hikes the tax on international and interstate phone calls to 6 percent. It also implements a 0.75 percent tax on all real-estate transfers. While stopping short of actually abolishing property taxes, the plan reduces them by between 70 percent and 80 percent, enacts a property-tax assessment cap of 5 percent or inflation (whichever is less), and allows local communities to use a percentage of property-tax money for new school construction and building maintenance.

Just as important to the plan's authors, a number of school-quality reform measures also passed, including the legislation allowing charter schools, additional money for at-risk students, and an increase in the minimum number of school hours required of pupils from 900 hours a year to 1,080 hours. State Treasurer Doug Roberts says the reforms accomplish Engler's goal of setting a new course for education in Michigan because they give parents more options than the old system. "With something like charter schools," he says, "parents will have a choice."

Whether the reforms work out in the long run, the plan is a complete break with tradition in Michigan. Engler and many others believe that such a drastic change was the only way to effect change at all. The governor feels the schools had become too rigid and inflexible, too controlled by unions and the tyranny of the status quo, to cope with the educational needs of students and the instructional interests of parents. "The problem with education [reform]," says Engler, "has been that when you try to approach it piecemeal, to bring about incremental change, the inertia of the status quo is just so difficult to overcome that it really does wear you down."

But while Republicans and a number of Democrats are basking in their success, plenty of difficulties loom on the horizon. Chief among these is the problem of revenue shortfalls in the years to come. Opponents of the reform plan charge that the plan is seriously underfunded and that within the next few years legislators will have to slash school funding, raid the general fund to keep schools open, and enact huge tax increases to make up lost revenue. The MEA claims that when the legislators approved the plan, they knew it was underfunded by $500 million dollars—a figure boosted to $1 billion because of concessions to various interest groups. Other detractors worry that relying on sales taxes, which drop significantly during economic downturns, fails to ensure a steady, predictable source of revenue.

Deputy Treasurer Khouri, whose newest job is to start implementing the plan he helped author, disputes the doomsday claims but admits that the new plan doesn't mean that schools will have ever-growing budgets. "Will there be tough decisions to make when we set spending levels in the future?" he says. "Will spending have to be brought in line with economic realities? Of course." Khouri believes that there will be steady revenue increases in years to come—though not on track with the booming increases of the 1980s.

While the fiscal soundness of Michigan's reform remains to be tested, it seems likely that the plan will serve as an inspiration for similar experiments in other states. More than 40 states are currently mired in lawsuits over inequities in public education, placing Michigan at the forefront of what promises to become a national trend toward massive school-funding reform. As *Time* notes, "The Michiganders' decision...has tremendous national resonance. It presented itself at a moment when property-tax funding of education had become a multistate catastrophe."

WHILE THE FISCAL SOUNDNESS OF MICHIGAN'S REFORM REMAINS TO BE TESTED, IT SEEMS LIKELY THAT THE PLAN WILL SERVE AS AN INSPIRATION FOR SIMILAR EXPERIMENTS. MORE THAN 40 STATES ARE CURRENTLY MIRED IN LAWSUITS OVER INEQUITIES IN PUBLIC EDUCATION, PLACING MICHIGAN AT THE FOREFRONT OF WHAT PROMISES TO BECOME A NATIONAL TREND TOWARD MASSIVE SCHOOL-FUNDING REFORM. AS TIME NOTES, "THE MICHIGANDERS' DECISION...HAS TREMENDOUS NATIONAL RESONANCE. IT PRESENTED ITSELF AT A MOMENT WHEN PROPERTY-TAX FUNDING OF EDUCATION HAD BECOME A MULTISTATE CATASTROPHE."

This is not to say Michigan will serve as a model. Although education analysts believe that a few facets of the state's plan—especially the charter-school provisions—will travel well, they are quick to note that Michigan's political and economic conditions were *sui generis*, making it unlikely that other states will implement the same quick, sweeping changes in education.

"There were a number of political convergences that make Michigan unique," says Chris Pipho, spokesperson for the Education Commission for the States in Denver. "The property taxes were very high but the sales taxes were low. The governor put his weight behind a radical idea to solve the problem. And some people would say the legislature put voters in a guillotine to decide [the issue]." Instead of telling states what they should do, says Pipho, the Michigan experience tells them that *something* can be done to reform education.

And even though Michigan's reforms have yet to prove themselves, opponents and proponents of the plan agree on at least two points. The first is that John Engler has demonstrated a powerful political acumen that may well propel him to national office. Although he denies that he's gunning for executive positions beyond the governorship of Michigan, Engler has been a conspicuous presence on the national circuit lately, appearing before the National Press Club and co-chairing the National Governors' Association Task Force on Welfare Reform. He is on virtually every handicapper's list of likely GOP presidential or vice-presidential candidates.

The other point that adversaries agree on is more specifically related to Michigan's recent legislative battle: Other states contemplating an educational overhaul face long, hard fights. ®

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The New, New World

Richard Rodriguez on culture and assimilation

Essayist Richard Rodriguez, best known for his 1982 book *Hunger of Memory: The Education of Richard Rodriguez*, is usually classified as an iconoclastic Mexican-American writer with little patience for political correctness. The description is accurate but incomplete. He is, more broadly, a student of America—a subtle and perceptive observer of the tension between individual and community, self and culture, optimism and pessimism, in contemporary life. He is also deeply ambivalent, especially in his more-recent work, including last year's *Days of Obligation: An Argument with My Mexican Father*. In that book, Rodriguez struggles with the loss of optimism, both his and California's, since his youth in the 1950s—the discovery of what Thomas Sowell might call "the constrained vision," the knowledge that "much in life is failure or compromise," just as his Mexican father said. For Rodriguez, though, this sense of life's limits is wedded to an appreciation for its possibilities. Editor Virginia Postrel and Assistant Editor Nick Gillespie talked with Rodriguez in Los Angeles in late April.

Interviewed by Virginia I. Postrel & Nick Gillespie

"Multiculturalism, as it is expressed in the platitudes of the American campus, is not multiculturalism. It is an idea about culture that has a specific genesis, a specific history, and a specific politics. What people mean by multiculturalism is different hues of themselves. They don't mean Islamic fundamentalists or skinheads. They mean other brown and black students who share opinions like theirs. It isn't diversity. It's a pretense to diversity. And this is an exposure of it—they can't even tolerate my paltry opinion."

Reason: You became famous in the early 1980s for opposing bilingual education and affirmative action—specifically for turning down jobs as an English professor that you thought you were offered on the basis of your ethnicity. Have you changed your mind about that?

Richard Rodriguez: No, I guess I haven't. Although I miss teaching, I go back to the university campuses today with some reluctance.

Reason: Why is that?

Rodriguez: For example, I was at CSUN [Cal State, Northridge] a few months ago, and I had to pass through some kind of approval of the Chicano studies program for my visit to be sanctioned. And it just becomes too tiresome. There is some etiquette—that I have to meet with the Chicano students to defuse whatever their anger is.

Reason: And what are those meetings like?

Rodriguez: Well, they're usually tedious. At Northridge there was a long speech where I was harangued by a woman from the history department, but clearly Chicano studies also, about my misunderstanding of Mexicans, about how Mexico has come to terms with its Indian identity. There have been a few times—for example, at U.C.-San Diego last year—where I did lose control of the audience. There were a number of students who were so disruptive that it was difficult to go on.

Reason: What do you make of that sort of attitude among college students?

Rodriguez: As it applies to me, I find it curious. I think of myself as left of center. I'm horrified that the left in America is as intolerant as it is these days. The level of incivility among people who are otherwise engaged in discussion of ideas also is surprising to me.

Reason: Where do you think it comes from?

Rodriguez: If you ask me about these individual students, I think they are required to think of themselves as representing a cause. Their admission is in the name of a larger population for whom they feel responsible, and they do claim to have a kind of communal voice to speak in the name of the people. If you have a different opinion, then you are not of the people.

Multiculturalism, as it is expressed in the platitudes of the American campus, is not multiculturalism. It is an idea about culture that has a specific genesis, a specific history, and a specific politics. What people mean by multiculturalism is different hues of themselves. They don't mean Islamic fundamentalists or skinheads. They mean other brown and black students who share opinions like theirs. It isn't diversity. It's a pretense to diversity. And this is an exposure of it—they can't even tolerate my paltry opinion.

Reason: *Days of Obligation* got a friendlier response than *Hunger of Memory*, partly because it was more Mexican.

Rodriguez: I think of it as more Catholic rather than more Mexican. An older man is writing this book. I thought of my earlier book as a more deeply Protestant book: my objection to the popular ideology of that time; my insistence that *I am this man*, contrary to what you want to make me; my declaration of myself, of my profession—political and personal; my defiance of my mother's wishes in publishing this memoir. It seemed to me very Protestant and very self-assertive—in the best sense.

This later book is much more Catholic and much more troubled. I'm much more interested in the intervention of the tragic in my life now. The AIDS epidemic has been a large part of that, but that isn't the only aspect. I quite clearly live in a California that has lost its charm, in a place that no longer quite believes in a future.

Reason: You suggest in your book that Mexico itself and Mexicans in America have become the comic side, the optimistic side, and that it is actually blond California that is getting pessimistic.

Rodriguez: That's part of the great irony. We've always assumed that America somehow belonged on this land. Well, maybe you can put America in a suitcase and take it to Hong Kong. Maybe you can take it to Shanghai. And maybe what our Scandinavian ancestors of the 19th century would recognize as America, or as an American city, they would see more clearly in Tijuana now than they would in San Diego.

Reason: What do you mean by the America that you could take to Hong Kong?

Rodriguez: The notion of self-reliance. The notion of re-creation. More and more I'm sensing that that kind of optimism belongs now to immigrants in this country—certainly to Mexicans that I meet—and less and less so to the native-born.

Americans seem to be tired. They talk

PHOTOS: JONATHAN NOUROK

about a lot of problems. I'm not depressed about the problems on the horizon, because I think that's where you get solutions. We'll start growing our spinach in space only when we run out of space. What I worry about is that when you talk about zero population growth and that sort of thing you are really talking about a sort of stopped time, where the whole process of evolution gets called into question.

Reason: Why do you think people today talk so much about culture?

Rodriguez: Because there is an enormous sense of discontinuity in our lives. A friend of mine who was writing a book on Orange County once took me to this enormous shopping center—South Coast Plaza—where there were Iranians and Mexicans and everybody, and I said to him, "Do you feel flattered that the whole world has come to where you used to bicycle across open fields?" And he said, "Of course I feel flattered. It's an extraordinary idea that the entire world would come to your playground. But at some other level I feel enormously besieged, and in some sense displaced, that here they're coming and they have no memory that I was here." We may become some new tribe of American Indians, who remember a California once upon a time and now are in the presence of rude people whose memory doesn't extend that far.

So we start asking questions about what our culture was and what their culture seems to be. Most people tend to use *culture* in a static sense—he represents this culture and I represent this culture. I think culture is much more fluid and experiential. I belong to many cultures. I've had many cultural experiences. And the notion that I've lost my culture is ludicrous, because you can't lose a culture. You can change a culture in your lifetime, as in fact most of us do. I'm not my father. I didn't grow up in the state of Colima in Western Mexico. I grew up in California in the 1950s. The notion that I've lost his culture is, of course, at some level true, but not interesting. The interesting thing is that my culture is *I Love Lucy*.

Reason: Are there political implications to this view of culture versus the static view?

Rodriguez: The interesting thing about America, the risky thing about America, is that when it opened itself up to immigrants, it opened itself to the possibility that it was going to become fluid and a stranger to itself. The great 19th-century argument against immigrants was not racial or ethnic but primarily religious. The argument against the Irish migration was a very interesting one, and one I've always taken seriously: whether or not an Irish Catholic can become a good American. Because in some way, as a Catholic in this country, I'm at odds with America. There is a prevailing ideology, a culture, which we change and adapt and resist and in various ways ignore and become part of. But in some sense it's not an easy relationship for the outsider, nor is it an easy relationship for those who are within the culture to know what to do with these outsiders.

The argument ends in the 19th century with this remarkable reversal from the anti-immigrant biases of the 1850s. Americans start talking about themselves as belonging to the tradition of the immigrant—we are all immigrants. And we see ourselves in the disheveled figure of the woman loaded down with the suitcase and garlic and crucifix. Who knew what she was saying? But we recognize in that movement away from her past that there was some great American drama that we saw ourselves as part of.

Reason: How do you account for the fact that in the beginning of the 20th century, as we were accepting the myth of the immigrant as the true American, the first broad-based restrictions on mass immigration started to be discussed in an active way?

Rodriguez: How do I account for the fact that, at a time when black and white relationships are so difficult in America, blond kids are listening to rap? Within what is desired is also what is feared. The stranger is the figure of the American but also the threat to American stability. Surely there is some part of us that wants to settle down, that doesn't want to keep moving.

Reason: You've written, "Protestantism taught Americans to believe that America does not exist—not as a culture, not as a shared experience, not as a communal reality. Because of Protestantism, the American *ideology* of individualism is always at war with the experience of our lives, our *culture*. As long as we reject the notion of culture we are able to invent the future." Isn't the paradox of American culture that it emerges out of the living of individualism?

Rodriguez: What I was arguing in that paragraph is that it is possible to share the experience of individuality but that it is always

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"Maybe Hillary Clinton's generation is the great generation of this belief that if you can reorganize the public realm all will be well, that the public can redeem the private. I'm beginning to sense among the young today that there is some reversal now in the other direction, that the kids I talk to—I'm talking about the children we would normally describe as troubled children—are more and more looking for more intimate ways of organizing themselves and restoring themselves."

paradoxically so. And that there is an anti-intellectual bias in America based upon a constant rejection of the elder, of authority, of the past. There is in the American experience continually this notion that we have sort of stumbled upon experience, that we have discovered sex, that we have discovered evil. I quote a woman at Columbia University who said, in the 1970s, "After Vietnam I will never believe that America is the good and pure country that I once thought it to be." I thought to myself, "Where has she been all this time? Did she miss the part about the slaves? Did she miss that page about the Indians? Where does that notion of innocence come up?" We are innocent of history, of memory.

What I'm arguing is that there is a tradition that immigrants should be taught as much as native-born Californians. A tradition of America which connects us to one another, despite the fact that the strongest thing that we could say about one another is that we are disconnected. But the woman I know in Berkeley who drives her red Volkswagen around to this day with a bumper sticker that says "Question Authority"—there is not a more conventional American ideal than "Question Authority."

Reason: In the context of immigrants, you've said that America is irresistible, that parents think that their children can pick and choose but that you can't resist it. Does that mean that the concern about assimilation is needless?

Rodriguez: Some part of it will be natural and inevitable. But no one is more American than the person who insists that he's not. I said to these kids in Corpus Christi the other day, "I don't mind that you go around pretending that you live in Mexico, and wear sombreros and so forth. I just want you to know that that's an American thing to do—that insistence that *I* can decide whether I'm going to be Mexican or not."

I was doing a documentary for the BBC a few years ago on American teenagers, and there was this girl in North Carolina who was telling us about how she wanted to become more Scottish. She was going to bicycle that summer in Scotland and get in touch with her Scottish ancestors. And my film crew, these Brits, said, "This idea of becoming more Scottish. That's a very American idea, isn't it?" Nobody in Scotland talks that way. And that's exactly the point, that the American arrogance has always been that the individual is in control of the culture. In some way, the people who are most individualistic, and most insistent on their refusal to assimilate, are the people who are most deeply assimilated.

The joke on Mexican Americans is that Mexicans now are Americanizing themselves at probably a faster rate than we are, and we may turn into British Columbians. You go up to British Columbia, and there are these more-British-than-the-British Canadians, with their picture of the queen in their dining room and tea cozies and so forth. My fear is that Mexican Americans may turn into people who are in some kind of bubble in history, while these new Mexicans are going back and forth.

Reason: You talk a lot about two things that are related. One is intimacy, and the other is the tension between the public and the private. How do you reconcile the public and the private, the communal and the individual life?

Rodriguez: I don't have any large scheme for that settlement. I do think that we go in cycles as a society. Remember Reinhold Niebuhr wrote a book called *Moral Man and Immoral Society* about 40 years ago, 50 years ago? If one were to write a book like that today you would have to almost reverse the title, *Immoral Man and Moral Society*. Dealing with a problem like the homeless, we have almost no sense that as individuals we can make any difference. We seem not to believe that we can change the condition of the American household, which is in disrepair—mothers unhappy, mothers being beaten by papa, the children being abused by somebody. We refer our problems to agencies or to the public realm because we sense more and more that some intimate circle has been fragmented.

Maybe Hillary Clinton's generation is the great generation of this belief that if you can reorganize the public realm all will be well, that the public can redeem the private. I'm beginning to sense among the young today that there is some reversal now in the other direction, that the kids I talk to—I'm talking about the children we would normally describe as troubled children—are more and more looking for more intimate ways of organizing themselves and restoring themselves.

Reason: Like?

Rodriguez: Like Nation of Islam, Victory Outreach. The most successful rescue structures in this society are not governmental but are cases of one person taking another person.

There is a man named Joe Marshall in San Francisco who has something called the Omega Boys Club. He used to be a junior-high-school teacher, and he realized that these kids basically did not have a home. He was expecting them to study a geography lesson, and they hadn't had breakfast. They were without such preliminaries in their intimate life that they had no way of living in the public life. So he committed himself as an individual to becoming their father essentially and to relating to them one on one—"I will be here for you." And he's had enormous success. He's sent over 100 kids to college—kids who would not normally fall under any umbrella of the ideal student. I'm more and more taken with that possibility, that what we are looking for now is some way to redeem the house.

I write in the "Late Victorians" chapter [in *Days of Obligation*] about the homosexuals who did not have a family, whose deepest secret was not held against the city but was held against their own parents. And they came to San Francisco in the 1970s and moved into the Victorian houses. They loved those symbols of 19th-century domestic stability, with four generations raised—one story upon the other—behind this great wooden door. This woman came up to me the other day and said, "The only happily married people I know are gay couples." I said to her, "Maybe that's part of the irony of our time, that people who didn't have that intimacy have been spending more time on it." I sense that there are very large groups of people who are without intimate life and who are looking for it now. And increasingly these people are not looking to government.

That's partly the reason for the rise of certain sorts of religious fundamentalism, which has within it a deep communal assurance and intimate assurance. There is down the block in my yuppie neighborhood this Filipino evangelical church. If you do not come tonight they will come looking for you. I don't want to say that ominously, because that's not the way they would describe it. But they miss you. And they eat together. They are there in the morning—I go jogging at 6:30 some mornings and they're coming out of church, and I think to myself, "This is insane. What have they been doing? When did they sleep?" Clearly something is going on in there that's not liturgical, or is so powerfully liturgical that it engages the re-creation of community in a city that is otherwise oblivious and hostile to them.

Reason: What do you think about the attraction of Latin Americans, both here and in Latin America, to evangelical Protestantism?

Rodriguez: Catholicism is a religion that stresses to you constantly that you can't make it on your own, that you need the intercession of the Virgin Mary, and the saints, St. Jude, and your grandmother—candles and rosaries and indulgences and the pope. There are all these intermediaries, because you facing God would be hopeless.

Suddenly, into the village comes this assurance that you don't need *padrecito*. You can read the bible yourself—you don't need someone to tell you what it says. You don't need the Virgin Mary, you don't need the saints, you don't need anybody. God is speaking to *you*. And just because your father beat your mother, just because your grandfather was poor, doesn't mean it has to happen to you. You can change your whole life around. This is all based on the Easter promise and not, as the Catholic church has always based it, on some Good Friday suffering.

Reason: Protestants always have empty crosses.

Rodriguez: It is an enormously powerful motif, the notion that Christ just got off the cross and walked away somewhere—went off to L.A.—and you could do it too. I think Protestantism is most successful in those cases where people are beginning to taste and sense discontinuity. And they begin to make sense out of it as providential. Protestantism also establishes, in a time of social change, the memory of the village. Within the storefront church, you can hold hands and remember what it was like in another time.

It will be one of the great changes of Latin America, the Protestantization of Latin America, and I think in some way that it will change the United States. The relationship of the evangelicals in places like Texas where there are rednecks and Mexicans together is really very interesting. The new Mexican who is now appearing in places like police departments—this is a new face of Latin America, and it is not necessarily one that we want.

Reason: How so?

Rodriguez: I think there has always been a charm to Latin America as being sort of morally lazy. We've always used it as a place where we could go to after dark and do what-

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"I think that education in that sense should be anti-American. There is enough in America out on the street to convince little Johnny that he's the center of everyone's universe—that his little 'I' on his skateboard matters more than anybody else's right to walk on the sidewalk. What the classroom should insist on is that he belongs to a culture, a community, a tradition, a memory, and that in fact he's related to all kinds of people that he'll never know. That's the point of education."

ever we wanted that we couldn't do here. We never really expected that Latin America was going to become a moral Clorox for our society, and maybe there's a ferocity there that we don't expect.

Reason: Aside from the desire to have this Latin America of easy virtue, are there bad consequences to that?

Rodriguez: How shall I put this? Mexican cops have never been cops I like to deal with. And there can be this ferocity—you see it in New York now with a lot of Puerto Rican and Hispanic households, the ferocity against the gay movement, the Rainbow Curriculum, for example. I see myself—as a homosexual man—much freer in America than in Latin America.

Reason: So that the danger is that in adopting a sort of American Protestantism, a religious version of individualism, they will not, do not, adopt the tolerant individualism, the political individualism?

Rodriguez: We're talking about a low-church Protestantism. It is part of the paradox of the Protestant tradition that there has been this intolerance within a religion otherwise powerfully concerned with the individual. It is a paradox within Catholicism that a religion so communal would otherwise be so individualistic—in the sense that people are so private.

Reason: The association of immigration with welfare in the political discourse, particularly in California, has become very tight, and yet of course everywhere you go in L.A. all you see are immigrants working. What do you make of that?

Rodriguez: It may have something to do with some Anglo-Saxon prejudice about the South—that these people really are not workaholics. In fact, every Mexican I've ever known has been haunted by a kind of work lust that is just extraordinary to me—it terrifies me.

It may also be that, well fine, this generation is going to scrape the dishes and wipe your grandmother's ass when she's an invalid, but that's not what their kids are going to do. When they start becoming American, we're going to have to pay for the kids, who are not going to do that work and who are going to be bitter. There is some logic in that. Ironically so. Isn't it interesting that we find that their Americanization is meaning that they would work less?

There is also this fear of the workaholic, which expresses itself especially against Asian immigrants. That they're working too hard. I've quoted that man who said to me, "Asians are unfair to my children because they work too hard." For a lot of people, the complaint about Asians is that not only do they work very hard but their work is multiplied—that it is entire families working, while I'm working here as a solitary being.

There is not a great deal of praise given to these immigrants, who have sometimes two and three jobs. A lot of these people are maintaining the quality of life in California. They're the ones who are planting the trees, mowing the lawns, cooking the Italian food in the yuppie restaurants. They are the ones who are maintaining what's left of the California dream, and of course they are the ones who are accused of destroying it.

Reason: Where do you think this backlash against immigrants is going?

Rodriguez: In the short term, I think it could be very ferocious. What worries me most is the black and immigrant split—the threat that blacks feel as they are replaced, literally, in places like Miami and Los Angeles. I think that could be very dangerous. I do know a number of black kids whom I've tried to get work for—as dishwashers, bus boys—and I'm told by employers that they don't hire black. They'll say, we hire Chinese, or we hire Mexican, or we hire Central Americans.

Reason: Much of the debate about immigration gets into issues involving public schools. There is this very powerful myth of the public schools as the conveyors of American culture and American ideas—the great assimilating mechanism. You went to parochial schools. You were taught by nuns who were not even American born, Irish nuns. You grew up with an incredible sense of difference from the surrounding culture. And yet you say those schools Americanized you. What does that tell us about the public schools?

Rodriguez: The irony is a true one. We used a lot of skills that came out of a medieval faith. The stress that the nuns placed on memorizing. The notion that education was not so much little Junior coming up with a new idea, but little Junior having to memorize what was already known. Education was not about learning something new. It was about learning something old. The nuns said about my sister, criticizing her to my parents, that she has a mind of her own.

At the same time, that taught us some basic

things. We knew certain dates of American history. I knew certain poems by Longfellow. I knew how to multiply. I had a sense of the communal within that tradition. I could not only name popes, but I could also name presidents. I memorized the 48 state capitals. We were in the 13th century, but the 13th-century skills prepared us in some remarkable way to belong.

Reason: Do you think more education like yours, in terms of curriculum and structure, would be a better form of education?

Rodriguez: Absolutely, because I think that education in that sense should be anti-American. There is enough in America out on the street to convince little Johnny that he's the center of everyone's universe—that his little "I" on his skateboard matters more than anybody else's right to walk on the sidewalk. What the classroom should insist on is that he belongs to a culture, a community, a tradition, a memory, and that in fact he's related to all kinds of people that he'll never know. That's the point of education.

It is, curiously, because of the Americanness of the public schools that they are less able to do what private schools can do, and that is teach us our communal relationships. American institutions end up becoming very American, and you have schools now that are supposed to teach little Hispanic kids to be privately Hispanic. That's not the point and never was. The point of education is to teach Hispanic kids that they're black.

Reason: What do you mean by that?

Rodriguez: Education is not about self-esteem. Education is demeaning. It should be about teaching you what you don't know, what you yet need to know, how much there is yet to do. Part of the process of education is teaching you that you are related to people who are not you, not your parents—that you are related to black runaway slaves and that you are related to suffragettes in the 19th century and that you are related to Puritans. That you are related to some continuous flow of ideas, some linkage, of which you are the beneficiary, the most recent link. The argument for bilingual education, or for teaching black children their own lingo, assumes that education is about self-esteem. My argument is that education is about teaching children to use language of other people.

Reason: The public language.

Rodriguez: If you all decided tomorrow that you wanted to speak Spanish, I would be the first one insisting that that's the issue. One of the reasons I haven't gotten involved in the English Only movement is because I thought they were misplacing the emphasis. I support the use of English in the classroom because that's what this society tends to use. English is the de facto official language of the classroom, of the country. If you all changed tomorrow and decided you all wanted to speak Esperanto, then I would become the great defender of Esperanto. I'm not an Anglophile.

Reason: Your writing has become increasingly private. The reason *Hunger of Memory* was so controversial was that, even though it was a personal memoir, it took stands on public issues—bilingual education, affirmative action.

Rodriguez: I do think there are public issues in *Days of Obligation*. Religion is a public issue. The majority of reviewers ignored the fact that this book was primarily about being Catholic in America, not about being Hispanic in America. I'm not Catholic to them. I'm Hispanic. And I'm not gay to them. I'm brown to them. And I'm not Indian to them, because they know who the Indians are—the Indians live in Oklahoma.

The issue of the Indian, which very few people have remarked on, is a public issue. My rewriting of the Indian adventure [into a story in which the conquistadors' culture was in effect conquered, absorbed, and transformed by Indians through conversion and miscegenation] was not only to move the Indian away from the role of victim but to see myself in relationship to Pocahontas, to see myself as interested in the blond on his horse coming over the horizon. It occurred to me there was something aggressive about the Indian interest in the Other, and that you were at risk in the fact that I was watching you, that I wanted you, that I was interested in your religion, that I was prepared to swallow it and to swallow you in the process.

Maybe what is happening in the Americas right now is that the Indian is very much alive. I represent someone who has swallowed English and now claims it as *my language*, your books as *my books*, your religion as my religion—maybe this is the most subversive element of the colonial adventure. That I may be truest to my Indian identity by wanting to become American is really quite extraordinary. R

"It is a powerful motif, the notion that Christ just got off the cross and walked away somewhere—went off to L.A.—and you could do it too. I think Protestantism is most successful in those cases where people are beginning to taste and sense discontinuity. And they begin to make sense out of it as providential. Protestantism also establishes, in a time of social change, the memory of the village. In the storefront church, you can hold hands and remember what it was like in another time."

Hits of the '80s

A second opinion about a much-maligned decade

By Richard B. McKenzie

When I asked a local Barnes & Noble bookstore manager if my new book, *What Went Right in the 1980s*, was available, he said, "Oh, you mean *What Went* Wrong *in the 1980s*, don't you?" After I corrected him, he found the right book on his computer, and I followed him as he searched several sections of the store in which the book might have been filed: current affairs, new releases, business, economics. No luck.

The manager then turned to me and asked quite seriously, "*What Went Right in the 1980s*—could that be a book of humor?" After I assured him that it wasn't, he queried again: "Fiction?"

No, the book is neither humor nor fiction. It is a serious attempt to dispel a host of myths about the 1980s that are so thoroughly ingrained in people that reactions to the book are perhaps more instructive than the text itself.

Probably the most widespread reaction, even from those who should know better, is that no one could possibly write a whole book on the things that went right during that dark decade—especially not one that extends to 400 pages. When a friend asked for the book at the counter of the local Brentano's, a customer standing behind her muttered, "Short book, no doubt."

A telephone interview I had with a reporter from a major metropolitan newspaper is typical of media calls. He started his interview, as others have, with the question, "What *did* go right in

the 1980s?" I could tell by the tone of his voice that he was prepared only for a short and inconsequential listing. I told him that, for starters, gross domestic product had risen. He was amazed that production had not fallen.

Yes, during the '80s, national production of goods and services actually rose in constant-dollar terms by close to a third, which is the equivalent of annexing the entire German economy (East and West) or adding once again the production of Connecticut, Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, South Dakota, and Vermont. And the economy would probably have expanded by hundreds of billions of dollars more if the Federal Reserve had not been forced to throttle the growth in the money stock in order to reverse the inflationary spiral of the 1960s and '70s.

The reporter was obviously taken aback, but he was also confident that all of the increase was in services (with hamburger flipping being the dominant new job) and that the country had definitely "deindustrialized." Not so. I assured him that the industrial production index had risen during the '80s in line with the overall economy and stood at an all-time high in 1990. The country's manufacturing output in real-dollar terms rose faster than overall economic activity during the decade and in 1989 represented a slightly higher percentage of national production than in 1980 or, for that matter, any year since the late '40s.

"Well, we may have grown absolutely, but didn't the country's production decline relative to the rest of the world?" the reporter asked hopefully. Nope, not in the '80s. U.S. output as a percentage of world output did decline in the '60s and the first half of the '70s. But after the mid-'70s, the United States held its own vis-à-vis the total production of all other major industrial countries combined (with Japan being a notable exception). U.S. output as a percentage of the rest of the world's output, including Japan's, was the same in 1989 as it was in 1975.

With obvious astonishment, the reporter asked a concluding question: "Why then are so many people across the country convinced that the 1980s were a dreadful decade?" A tough question, no doubt, with no obvious single answer.

Many people just don't want to know the good news about the decade, a point that has been driven home by encounters with university colleagues. What continues to be remarkable about the reaction to *What Went Right in the 1980s* is people's inclination to find pat phrases to dismiss everything in it. *Scientific fiction* is one such term, used by someone who obviously wished that even the data on national production were not believable.

Clearly, a part of the answer is that hardship sells a lot of newspapers and magazines. So the media perhaps have an economic incentive to play up the failures and losses of the decade and to ignore the successes. That makes for a distorted picture of overall economic life. Another part of the answer may be that the country did lose more than a million manufacturing jobs during the '80s. But the country probably would not have been a world-class industrial power at the end of the decade had those jobs not been destroyed, largely through productivity increases.

The loss of manufacturing jobs was a worldwide phenomenon. Still, competition got tougher for many Americans, and the overwhelming majority of Americans responded by getting tougher themselves. Ford would not have the best-selling automobile in the country today, with quality to match, had it not faced the challenges it did in the early and mid-'80s. The '80s were a period of what the late great economist Joseph Schumpeter called "creative destruction." And although the '80s had some of both, there was much more creativity than destruction.

I'm now convinced, however, that many people just don't want to know the good news about the decade, a point that has been driven home by encounters with university colleagues. What continues to be remarkable about the reaction to *What Went Right in the 1980s* is people's inclination to find pat phrases to dismiss everything in it. *Scientific fiction* is one such term, used by someone who obviously wished that even the data on national production were not believable.

At a recent happy hour attended by university staff and faculty, for instance, an administrator came in waving a local newspaper that featured a column of mine summarizing the themes of my book. "I'm not believing a word in this," she proclaimed.

"Sounds like Stalinism to me," snapped another administrator, without even reading the column. I asked politely how he could equate a recitation of many readily available facts with the work of one of the most ruthless men in history. "Well, it's this revisionist history thing," he explained, as if anyone who dares to correct a mistaken view is necessarily seeking to distort reality. I suggested that he read the book, knowing full well that he would remain content in his knee-jerk, uninformed assessment.

In a more private conversation at the end of the happy-hour

Recession

table, a medical professor challenged me politely but confidently on several fronts. "Surely the 1980s were a decade of greed," said the doctor.

No, greed was not invented in the '80s. And while greed is probably underrated as an economic motivation—even by the decade's critics—there is literally no evidence, aside from a few anecdotes about Wall Street and savings-and-loan crooks, that greed was more unbounded in the '80s than in previous decades. In any case, greed obviously did not end with the advent of a new, anti–profit-motive administration in the '90s.

One of the new administration's strongest supporters, for instance, recently was able to pull in a reported $20 million for a single concert. Critics who have damned other entrepreneurs for their "princely incomes" now appear willing to excuse such a gargantuan paycheck, even though such a sum represents a rate of pay that equals or surpasses the so-called excesses of most '80s "paper entrepreneurs."

In fact, if charitable donations are a sign of selflessness, then the '80s were anything but greedy. Charitable contributions in inflation-adjusted terms rose at a substantially faster pace in the '80s than during the previous two-and-a-half decades. Philanthropy outpaced consumer debt, as well as purchases of goods and services that supposedly reflected the mood of the "me-ism" decade (e.g., jewelry, restaurant meals, and health clubs). Even corporate giving, as a percentage of corporate income, rebounded in the '80s to more than 3 percent of after-tax profits from less than 1.5 percent in the '70s.

If charitable donations are a sign of selflessness, then the '80s were anything but greedy. Charitable contributions in inflation-adjusted terms rose at a substantially faster pace in the '80s than during the previous two-and-a-half decades. Philanthropy outpaced consumer debt. Even corporate giving, as a percentage of corporate income, rebounded in the '80s to more than 3 percent of after-tax profits from less than 1.5 percent in the '70s.

"Ah, but the rich got richer while everyone else got poorer." The data are decidedly mixed. Yes, many rich people became much richer, but it is also true that many lower- and middle-income Americans got richer. Besides, the overwhelming majority of rich people made their money the old-fashioned way: They earned it. As Microsoft Chairman Bill Gates did, they took sizable risks and provided Americans with superior products on more favorable terms.

"But the rich made out like bandits when it came to taxes at the same time Reagan slashed welfare programs to the bone." Again, not so. Top-income earners paid a higher percentage of federal taxes in 1990 than in 1980. Total real dollars spent on welfare programs for low-income families and children rose by close to 20 percent during the Reagan years—at the same time that the number of poor people in the country actually modestly fell by 300,000. And during the decade, a family of four at the poverty-income line saw its real federal tax liability slashed by a whopping 75 percent.

"Surely the 1980s were a decade of debt." Indeed, they were for the federal government. However, it is wrong to assume the rise in private debt was largely unwarranted. A major unnoticed reason for the explosion of debt in the expanding '80s was the collapse of Americans' debt-to-asset ratios in the unstable, inflationary '70s. Much of the assumption of private debt in the '80s also went into real productive assets such as computers and houses, which explains why Americans' consolidated net worth (not including their considerable human capital) rose by 14 percent, or $2 trillion, during the decade.

My friend the medical professor was incredulous, but she was willing to confess what I had suspected: "You know, Richard, I just don't want to believe that you are right."

An even more telling reaction came from a history professor (and an ardent critic of virtually everything Ronald Reagan ever did while in office). He indicated an interest in using *What Went Right in the 1980s* in a graduate course that would also include readings from critics of the decade. He asked where he could get a copy, because he wanted to read the book first, a reasonable wish. I was flattered until he admitted, "I don't want to assign it if it is a *good* book." There was an obvious element of teasing in his voice, but there was also an element of truth. He had bought all of the myths about the decade, and a "good book" would clearly make it tougher for him to insist that the only possible righteous way to economic prosperity is through the halls of Congress and the federal treasury.

My historian friend is convinced, as are most critics, that the S&L disaster that became painfully evident in the last half of the decade reveals the theoretical and practical bankruptcy of Reagan's free-market policies. After all, the argument goes, the S&L industry was "deregulated" in the early '80s. But the S&L deregulatory statute was actually proposed under Carter. More important, the S&L problems hardly reflect "free-market poli-

cies," under which people are fully accountable for the risks they take. On the contrary, the S&L debacle reflects a "national industrial policy"—or, more accurately, a national *financial* policy—gone awry.

The S&L travesty was an economic disaster in the making for 50 years. For starters, the industry could not diversify its portfolio—it had to focus its loans narrowly on housing—and this increased its risk of failure. While this is an obvious point of departure in discussing the S&L crisis, it nonetheless makes critics of the '80s, who want to believe the decade fully caused its own problems, squirm.

The thrift industry was already in deep financial difficulty in the early '80s, primarily because of the inflationary spiral of the '70s. To compete with other investment opportunities, S&Ls had to pay escalating interest rates on their deposits. But because they already had full portfolios of low-interest, long-term loans, they had no way of generating the money necessary to do so. The failing industry desperately needed a bailout, but Congress and the Carter administration did not want to infuse it directly with federal funds. Instead they decided to allow S&Ls to seek high-risk, high-return real-estate investments while fully covering the added risks by expanding the federal deposit-insurance system. Because of that back-door subsidy, unwarranted risk taking—and occasionally outright fraud—became a pastime for many S&L bankers.

The '80s have been described as a decade of Ds: Decay, Decline, Deindustrialization, Debt, re-Distribution, and Despair. The facts make mincemeat of those flippant characterizations, but many of the critics don't seem to want to be bothered by the facts, possibly because they have a stake in keeping the '80s down and out. It appears to be no accident that they accompany their sordid claims about the decade with calls for "change" or, more precisely, for reversal.

Contrary to the critics' claims, the debacle proved the flaws in government bailouts and industrial (financial) management, not free-market policies. The S&L policy ploy is one that Ronald Reagan should have spurned with the same vehemence that he opposed the national industrial policy recommendations of Walter Mondale in the 1984 presidential election.

But while critics of the '80s delight in faulting Reagan for the S&L problems, they consistently seek to dismiss my reasoning, not with effective counter-arguments, but with a glib rejoinder: "twisted argument." Given the facts, they understandably want the weaknesses of the person, not the policy, to be the focus of disdain. After all, the allure of industrial management from Washington is at stake.

At times, though, the critics of the '80s seem to relent in their use of unwarranted claims. But they usually don't concede any real ground. Instead, they seek to shift the terms of the debate, as they did throughout the Reagan years. At the start of the '80s, the country was mired in a recession brought on by the severe anti-inflationary policy of the Federal Reserve (inaugurated in October 1979). The critics were then confident that the country had caught the "British disease." They anticipated a long-term malaise because nothing seemed to be working very well (the late '70s were indeed a period of practically no growth in worker productivity).

But once the '80s recovery began, the argument shifted to the problems of economic decay and "deindustrialization." When it became transparent in the mid-'80s that the economy was being transformed by a significantly more productive industrial base, the argument shifted once again, this time to concern over long-term decline relative to other countries. When it became evident that claim was groundless, the critics began to assert that the *real* problem was the "great U-turn" in worker wages caused by the unchecked greed of morally bankrupt capitalists.

With my book in hand and a lot of data to work with, any number of critics have told me, in so many words, "In spite of your evidence, *we* know better: The problem in the 1980s was attitude," which all too often translates to, "Don't bother trying to change my mind."

When I insist that some claims are worth checking, I can count on the critics to hang the albatross of political intentions around my neck. Obviously, the book is the work of an apologist for Ronald Reagan, they say—a notion which cannot be further from the truth. Although I supported many of Reagan's policies, I'm neither a Republican nor a Democrat (in 1992, I voted for Bill Clinton—or, rather, against George Bush). In good humor, I submit that I'm something far worse than a political ideologue: an academic economist who doesn't believe he has been able to tell the whole story of the '80s but who is convinced that he has made a contribution, albeit minor, to balancing an important policy debate.

I didn't conceive of *What Went Right in the 1980s* as a polemic. It emerged from a series of studies I undertook on various prominent policy claims that failed to reflect my own experience. In researching the claims, I was often dumbfounded at the gap

between the rhetoric and reality. I discovered only two years ago that I had assembled a book-length work, one that might catch others by surprise, which it obviously has.

The reaction has hardly been all negative. I have been struck by the amount of heartfelt gratitude from people across the country for providing, if nothing else, an alternative view, one that more accurately described the America they knew in the '80s. One radio talk-show host went so far as to suggest that the critics must have been living in outer space. I was especially struck by the comments of a woman from North Carolina who called in on the same program. She said, with eloquence that cannot be captured here, that she and her husband never made more than $23,000 a year during the '80s, but they did improve their lot and were thankful for the chance to do their own thing and to have and educate their children. They now wanted "nothing from nobody."

Reagan and his cohorts should probably be given both far less credit and far less blame for what happened in the '80s. Reagan's policies were nowhere near as "conservative" and "free-market oriented" as the critics would like to believe. His main contribution to conservative government, if it can be called that, is that he may have helped to cap the upward march of government spending as a percentage of gross domestic product.

The '80s have been described as a decade of Ds: Decay, Decline, Deindustrialization, Debt, re-Distribution, and Despair. The facts make mincemeat of those flippant characterizations, but many of the critics don't seem to want to be bothered by the facts, possibly because they have a political and economic stake in keeping the '80s down and totally out. It appears to be no accident that critics of the '80s accompany their sordid claims about the decade (or "the last 12 years," a phrase that now flows with ease from Bill Clinton's lips) with calls for "change" or, more precisely, for reversal.

They want a return to the "good old days" of the '60s and '70s, of escalating government involvement in the economy—by way of health-care reform, managed international trade, expansive industrial policies, and labor mandates. Such a reversal requires, apparently, that Reagan's policies be trashed, and one of the best ways of doing that is to dump on the decade as a whole, to insist that the times were far tougher than they were and that the toughness of the times was all due to Reagan (with no help from Congress).

But contrary to the claims of the decade's critics, Ronald Reagan and his political cohorts should probably be given both far less credit and far less blame for what happened in the '80s than they have been given. After all, Congress was at work, and Ronald Reagan did not always get his way with Congress. And Reagan's policies were nowhere near as "conservative" and "free-market oriented" as the critics would like to believe.

During the Reagan era, for instance, government continued to expand in real-dollar and per-capita terms. Total government spending represented a higher percentage of national income during the Reagan administration (32.7 percent) than during the Carter administration (30.9 percent).

Reagan's main contribution to conservative government, if it can be called that, is that he may have helped to cap the upward march of government spending as a percentage of gross domestic product. I say "may" because government spending during the '80s was also capped relative to national production in most other major industrial powers, despite widely varying political philosophies in those countries. That fact makes one wonder whether it could have been "all Reagan's fault" (or credit). It's just as plausible to interpret the capping of spending as a global economic force at work, forcing governments to seek less onerous economic policies.

It is clear that not everything went right during the '80s. Competition got tougher for many worker groups, especially those Americans in previously protected (and unionized) markets and those Americans with limited education. Crime continued to be a problem, especially in the inner city. Teenage pregnancy and divorce boomed. Too many Americans suffered a lapse of civility, frugality, and diligence.

Nevertheless, in spite of all the problems, much did go right in America in the '80s. That is the bottom line that too few Americans, Bill Clinton included, are willing to accept. Clinton can thank his lucky political stars that his assessment of the "past 12 years" is largely wrong. In the considerable successes of the '80s lie the seeds of prosperity for the rest of the '90s and beyond. R

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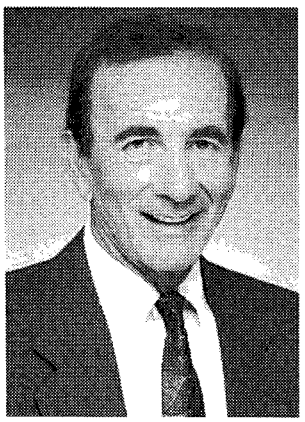

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Gunning for Change

By Liam T. A. Ford

A Chicago alderman wants to end the ban on handguns.

In February, Illinois state Sen. Rickey Hendon came home to discover that his house on the Westside of Chicago had been robbed. The burglary got more than the usual amount of press attention because the former alderman lost not only money but also an unregistered handgun. It has been illegal since 1983 for even the most law-abiding Chicago residents to own handguns; only guns owned before the ban was passed can be registered, and they must be re-registered every two years. Possession of an unregistered handgun carries a penalty of less than a year in prison or a $500 fine.

Hendon was unapologetic. "I have a right to protect myself," the black Democrat told the Chicago *Sun-Times*. The police decided not to charge Hendon with violating the gun law because it wasn't clear who actually owned the gun.

Hendon's attitude is increasingly common among Chicago's black political leaders. During the recent primary campaign for the presidency of the Cook County Board, for instance, the leader of the Harold Washington Party caused a stir at a candidates' forum when he derided gun control as ineffective. Those who say gun control deters crime ignore recent findings by criminologist Gary Kleck that suggest guns are more often used to stop crimes than commit them, said David Reed, head of the party named for Chicago's first black mayor. "I'd rather be tried by 12 than carried by six," said Reed, a business consultant.

That sentiment is common among the residents of Chicago's tougher neighborhoods. It's easy for people with wealth and political power to push stricter and stricter gun control laws, notes Alderman William Beavers, who represents the working-class, mostly black South Shore district. The wealthy, he says, "can afford to pay a detective agency or some kind of police agency to act as security." His constituents, he argues, deserve the right to protect themselves.

Alderman William Beavers: He says his constituents deserve the right to protect themselves.

Beavers is no stranger to gun crime. Before his election to the City Council 11 years ago, he spent 21 years in the Chicago Police Department, working some of the neighborhoods responsible for the city's nickname of "Beirut by the Lake." Now, for the second time in five years, he has proposed legislation to reopen handgun registration. The idea is endorsed by other prominent black political leaders, including activist Sokoni Karanja of the Center for New Horizons and Aldermen Virgil Jones and Robert Shaw, who feel that gun bans prevent law-abiding citizens from protecting themselves.

While the national press has sympathetically covered high-profile attempts by the Department of Housing and Urban Development and the Chicago Housing Authority to control guns in Chicago's federally funded housing projects, it has ignored black political leaders' challenges to the city's draconian handgun-control laws.

"There's always been a kind of streak in the black community here of those who want to defend themselves," says Northwestern University law professor Daniel Polsby, an expert on gun issues. But that proclivity, notes Polsby, is counterbalanced by the trend—both nationally and in the greater Chicago area—away from ideas of "responsible gun ownership" and toward stricter gun control. "There's a tremendous amount of momentum in the culture to turn gun ownership into...an unacceptable thing," observes Polsby.

That is certainly the case in Chicago, where the 1983 freeze has driven gun ownership underground. Since the freeze, the number of registered handguns has declined precipitously as owners have died or have failed to re-register. Just after the ordinance went into effect, there were about 400,000 handguns registered in Chicago. The Chicago Police Department says that number currently stands at 143,000.

Total official registration of all guns, including rifles, shotguns, and handguns, has declined at a similar clip. In 1982, residents registered 727,000 guns. Twelve years later, that number stands at 215,134, even though Chicagoans can still legally buy long guns. While numbers of registered weapons have fallen, few observers assert that the smaller numbers mean fewer weapons actually in circulation.

The 1983 handgun registration freeze is a legacy of one-term Mayor Jane Byrne, who capitalized on the anti-gun sentiment that flourished in the early 1980s in the wake of the assassination attempt on Ronald Reagan. The suburbs of Morton Grove, Evanston, and Oak Park outlawed handguns about the same time Chicago did, although their bans included even existing weapons.

FROM THE BEGINNING, THE CHICAGO BAN elicited negative reactions from black leaders. Local newspapers quoted several black politicians who called the ban racist because it penalizes people who live in poorer neighborhoods with higher crime rates—often black neighborhoods. Beavers, however, doesn't emphasize the racial dimension in opposing the gun-registration freeze. Instead, he stresses Second Amendment issues and pragmatic policy concerns.

"The Constitution allows you to bear arms in your home," he says. "But according to our city ordinance, it's illegal to own a firearm that is not registered."

Gun control will always fail because criminals are never going to register their guns, says Beavers. And as for citizens who want to protect themselves: "People are going to own guns. You cannot deny them the right."

(While he defends a right to ownership, the alderman is no Second Amendment purist. He is, for instance, against the issuing of carry permits.)

Beavers is also disturbed that the registration freeze forces law-abiding citizens into breaking the law if they, like Sen. Hendon, try to protect themselves by keeping a handgun in the house. And the freeze, Beavers thinks, makes the police's job tougher by making it more difficult to track stolen firearms. "Guns are stolen now from people who don't have them registered and won't report the [theft]," says Beavers.

The sponsor of the registration-freeze ordinance, Alderman Edward Burke, has been quoted as saying the ban should be re-examined. With Burke's apparent support and backing from other black leaders, Beavers thinks there's a good possibility his ordinance might pass. But Beavers recognizes that he faces a tough battle. One of the staunchest supporters of his previous effort, Alderman Ernest Jones, died in 1992. The current proposal is still pending in the council's Police and Fire Committee, which Beavers chairs. Most important, Mayor Richard Daley—whose resistance in 1989 effectively kept the proposal from even making it to a full council vote—is again opposed to renewed registration, and usually as the mayor goes, so goes the city.

And even though Beavers stresses that lifting the ban would make life easier for the city's cops, the Chicago Police Department remains a major adversary. The CPD sent the lone opposing witness when Beavers's Police and Fire Committee held hearings five years ago. A department spokeswoman would not comment on official police policy for this article, but she noted that the CPD has opposed reopening registration in the past and called the idea the police might endorse new registration "ludicrous."

Even though Beavers's second attempt to revoke the gun-registration ban faces long odds, it may represent an emerging urban consensus that gun-control laws have failed both at curbing violent crime and protecting citizens. Gun-control expert David B. Kopel of the Independence Institute in Denver notes that several states have passed much more liberal carrying laws in the past year. "The vast majority of Americans continue to believe that gun ownership for defensive purposes is a right," says Kopel. Recent legislation on the state and local levels reflects that sentiment.

For his part, Beavers remains pledged to change Chicago's handgun registration law by hammering home arguments born out of real-world experience. Gun control will always fail, he argues, because criminals are never going to register their guns. And as for ordinary citizens who feel a need to protect themselves: "People are going to own guns. You cannot deny them the right to own a gun." ®

Chicago native Liam T. A. Ford is a reporter for the City News Bureau.

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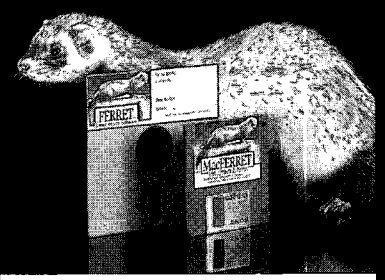

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Bill Killers

By Rick Henderson

Are greens planning a hasty retreat from the legislative battlefield?

The NRDC's Erik Olson: He's afraid an "unholy trinity" of checks on government regulations will weaken environmental bills.

ON MAY 19, THE U.S. SENATE voted to require local water systems to remove radon from tap water, establish a $6.6-billion federal loan program to help small cities and towns upgrade their water-purification systems, and elevate the Environmental Protection Agency to cabinet status. Even so, prominent environmentalists view the 95-to-3 vote to reauthorize the 1974 Safe Drinking Water Act as a loss.

"The bill lets tap water contain more cancer-causing contaminants than allowed under current law," complained Natural Resources Defense Council lawyer Erik Olson to *The Washington Post*. Relaxed regulations, however, aren't the environmentalists' main gripe. They are steamed about two amendments slipped in at the last minute: a requirement sponsored by Sen. Bennett Johnston (D-La.) that the EPA conduct a cost-benefit analysis for any new water regulation that costs more than $100 million and a rule authored by Sen. Bob Dole (R-Kans.) subjecting any regulation that might cause a taking of private property to a "takings-impact analysis." A takings analysis would force the feds to consider less-costly alternatives to the proposed regulation or to specify how the owner would be compensated for the taking.

Green groups recognize that a backlash against overreaching environmental regulations has disrupted their cozy relationships with powerful congressional barons and executive-branch regulators. They contend (in private, for the most part) that takings analyses and cost-benefit requirements make up two parts of an "unholy trinity," a group of issues that could gut their pet laws. The third part of the "trinity" is unfunded mandates—costly federal regulations that must be enforced and paid for by state and local governments. Despite frenzied opposition from mainstream environmental groups, the Senate's "unholy" amendments could stop any attempt to make laws greener.

If 1990 marked the 20th anniversary of Earth Day, 1994 should have been the Year of the Greens. Along with the drinking-water bill, four major environmental bills—the Marine Mammals Protection Act, the Clean Water Act, the Endangered Species Act, and the Comprehensive Environmental Response, Compensation and Liability Act (a.k.a. Superfund)—are up for reauthorization. Environmental groups expected the new bills to greatly extend federal powers to regulate wetlands, protect endangered species, and pummel polluters. With champions of the ecosphere controlling the White House and Capitol Hill, you'd think green activists would be breaking out the champagne and making reservations for bill-signing ceremonies on Pennsylvania Avenue.

But heavy-handed regulations have spawned a grass-roots backlash against the organized environmental movement. The U.S. Conference of Mayors lobbies Congress to reduce unfunded mandates. Trade associations such as the National Federation of Independent Business commission cost-benefit studies to counteract newly proposed regulations. And the property-rights movement has exploded.

Small ranchers, miners, and landowners have gained the sympathy of legislators, who promise to ease regulations in the new versions of green laws. Peggy Riegle, president of the Fairness to Land Owners Committee, works with more than 500 local property-rights organizations. Of the 15,000 "mom and pop" landowners who have joined Riegle's group during the past four years, she says more than 10,000 face "having their property stolen by bureaucrats" enforcing wetlands regulations. Every member of Congress, says a Capitol Hill staffer, "has a constituent with one of these problems." (See "The Swamp Thing," April 1991.)

Environmental regulations have reached beyond factory smokestacks and corporate dumpers. Now they can prevent a congregation of 120 Baptists in Florida from building a church and a retired couple in Michigan from constructing a home on a lakefront lot they've owned for 25 years. More and more individuals are asking elected officials what benefits they're getting in return for these tough regulations. Responding to the backlash, the leaders of the Beltway-based viro groups have decided that, if they can't guarantee new environmental laws more draconian than the versions currently on the books, they'll instead try to keep the laws from being reconsidered.

JOHN EISELE

A WIDELY CIRCULATED MARCH 4 MEMO from the NRDC's Olson to the heads of six other environmental groups explicitly spells out the greens' strategy: "The community needs to focus more sharply on a limited number of pieces of legislation and to put more substantial resources into winning that legislation." The memo says, "If we cannot get [Senate environment committee chairman Max] Baucus and [Majority Leader George] Mitchell to agree to move a strong [drinking-water] bill on the floor, we can move to a kill strategy"; "we will want to ask the Hill and the Administration to take Superfund off the table"; "[we should] ask for a drinking water bill markup delay...so that we can work with Mitchell and Baucus and the Administration to set a good precedent on the unholy trinity issues." The message is clear: Beltway-based environmental organizations can't expect Congress to accede to their every demand. And their failure to stop the drinking-water act suggests that green groups can't even kill bills they don't like.

The tide started turning against environmentalists with last fall's vote to establish the National Biological Survey. The survey was ostensibly intended to tote up the nation's fish, fowl, and mammals. But property-rights groups like the National Inholders Association, Defenders of Property Rights, and the National Wilderness Institute worried that this agency would give federal regulators a means to regulate private lands on which "candidates" for listing under the Endangered Species Act live.

House members sympathetic to property owners added amendments to the authorization bill that prohibit activist-group "volunteers" from conducting the survey and that require NBS agents to get written permission from property owners before they can enter private lands. These amendments have so constrained the NBS that greens don't want the Senate to authorize the agency just yet—Olson's memo suggests taking NBS off the table.

Still, the National Biological Survey isn't dead. Interior Secretary Bruce Babbitt has appropriated $162 million from his budget for the NBS and has carved out territory in his department for its functions. Babbitt shows how a dedicated regulator can keep the regulatory powers of a bill alive even if Congress won't pass it. As long as Babbitt can fund the NBS, opponents can do little to stop him.

Environmental regulations have reached beyond factory smokestacks and corporate dumpers. Now they can prevent a congregation of Baptists in Florida from building a church and a retired couple in Michigan from building a home on a lot they've owned for 25 years.

Similarly, regulations under the bills due for reauthorization won't disappear if Congress fails to vote on them this year. The laws are set up to continue with their current regulatory powers until reauthorized, whenever that may be. Greens can sit back, hope the fervor over the "trinity" will abate, and then move to strengthen (or at least preserve) their pet projects.

CONGRESSIONAL POLITICS MAY BE WORKing against that strategy, however. The natural-resources committees in Congress are dominated by environmentalists. But a new, tenuous coalition of congressional back-benchers has started to form. Conservative Southern and Western legislators normally sympathetic to landowners are joining with younger moderates who don't have seniority on Capitol Hill and are more beholden to their constituents than to committee chiefs. For instance, freshmen Florida Reps. John Mica (R) and Karen Thurman (D) tried to add a risk-assessment amendment to the EPA cabinet bill in February. When it appeared Mica and Thurman would win the vote, supporters of the cabinet bill removed it from consideration.

Congressional Quarterly reports that Thurman "built a reputation for herself as a Florida legislator pushing laws to protect wetlands and clean up leaky underground storage tanks." But she calls a risk-assessment requirement "common sense." Much like the back-bench rebels who have supported insurgencies to trim federal spending and cut the deficit, these junior legislators have shown they will defy congressional leaders when they believe they can win. Soon after the Mica-Thurman amendment was proposed, Olson circulated his "unholy trinity" memo.

Of the three portions of the "trinity," the takings issue threatens green ambitions the most. Unfunded mandates affect only state and local governments, which may themselves regulate private citizens without paying the costs. And cost-benefit analyses can be fudged. But if the federal government indeed had to appropriate money to pay for all the regulations they hand down, we would certainly see fewer land-use restrictions.

The takings issue moves beyond arcane calculations of benefits and mandates and, as one environmental analyst says, "hits people in their souls." Environmental groups "have big staffs, lots of money, and smart people," says Myron Ebell of the National Inholders Association, a group that represents Western landowners. "We have fear, pain, and anger on our side."

THE DOLE AND JOHNSTON AMENDMENTS are but two tame examples of environmental reforms before Congress. Rep. Jimmy Hayes (D-La.) has collected 163 co-sponsors for a wetlands bill that incorporates property-rights protections. And consider the takings-compensation bill Rep. Billy Tauzin (D-La.) hopes to take to the House floor later this year.

Tauzin's bill, HR 3875, would specify that any action under the Endangered Species Act or the wetlands provision of the Clean Water Act that reduces the value of a property owner's land by 50 percent or more constitutes a regulatory taking un-

der the Fifth Amendment to the Constitution. The owner would be entitled to compensation from the federal government.

In a "Dear Colleague" letter, Rep. Norman Mineta (D-Calif.), chairman of the House public works committee, suggested that Tauzin's bill would subvert the Constitution and bankrupt the federal treasury. "We should not adopt the idea," wrote Mineta, that "the private interest must be paid to obey the law and not to harm the public."

Tauzin counters that his bill, which has 136 co-sponsors, would in fact enhance constitutional protections. He cites two takings decisions handed down by the U.S. Court of Claims in which Chief Judge Loren Smith asked political officials to clearly define regulatory takings. "Courts," wrote Smith in *Bowles v. U.S.*, "can only interpret the rather precise language of the fifth amendment to our Constitution in very specific circumstances. To the extent that the constitutional protections of the fifth amendment are a bulwark of liberty, they should also be understood to be a social mechanism of the last, not first resort. [Courts] cannot hope to fill in the portrait of wise and just social and economic policy."

Today, notes Tauzin, the courts must decide compensation in takings lawsuits case by case. In addition, anyone wanting to sue the federal government must file suit in the Court of Claims in Washington, often many years after the government enforces its regulations.

"Few people have the resources to sue the government," he says. "We're making sure that every small landowner has the same right to justice as any big landowner who can afford to spend 10 years in court." As for compensation, it "will break the bank," Tauzin says, "unless you change environmental policies. But that's not my problem. The Constitution demands compensation in takings cases."

Green activists recognize that they can no longer steamroll any bill they want through Congress. As Sierra Club Executive Director Carl Pope told *Congressional Quarterly*, "These issues [the unholy trinity] have managed to slow us down and weaken laws and get in the way of the normal process"—that is, passing ever-more-restrictive environmental laws —"of Congress and the administration."

Al Gore and his environmentalist buddies are still in the White House, but any administration starts to lose political clout after mid-term congressional elections. And with the impending retirement of George Mitchell, the most powerful environmentalist in either house of Congress, greens will lose a crucial advocate. "If they can't pass [tough] environmental laws in the first two years of the Clinton administration," asks Ebell, "when the hell can they do it?" R

Rick Henderson is Washington editor of REASON.

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Defending the President

By Michael McMenamin

A non-Nixonian strategy for avoiding that messy sexual harassment trial

IT'S A DIRTY JOB, BUT SOMEbody's got to do it. That's why more laboratories are using lawyers instead of white rats in their experiments: There are more of them; you don't get as attached to them; and there are some things rats won't do. So let's get on with mapping out a legal strategy—and the tactics to go with it—for Bill Clinton to beat the sexual harassment lawsuit filed against him by Paula Jones.

After securing an appropriately large retainer, we start by assuming that the gist of Jones's complaint is true—that Clinton used an Arkansas state trooper to solicit her to meet Clinton in his hotel room; that once she was in his room, Clinton attempted to kiss her neck and put his hand on her thigh underneath her culottes; that she then sat on a sofa and was joined by Clinton, who dropped his trousers and underwear as he sat down, thereby exposing "distinguishing characteristics in Clinton's genital area that were obvious" and asked her to perform oral sex; that she refused and left the room; and that, on the same day, she told three other women about the incident.

Why assume this? Shouldn't our client deny everything? Protest his innocence? Question the motives and credibility of his accuser? Of course he should. And his lawyer has done that for him, in a press conference the day the suit was filed.

But now we're behind closed doors, and we're talking strategy, not public relations. And our strategy is simple. It's to win. At the earliest possible time. And before the plaintiff has much opportunity to take sworn testimony from potentially embarrassing witnesses like state troopers, Gennifer Flowers, and other Clinton mistresses. So we need to take a page out of the legal playbook that helps the news media win 90 percent of all libel cases before trial on issues other than truth.

Truth is the last line of defense for the media, and so it should be for Clinton. As long as we win, public relations can take care of the rest. Why avoid the issue of truth? Because it's her word against his, and only a jury can decide who's telling the truth. If this case goes to a jury, we will have let our client down no matter what the jury decides. And they may well decide she's telling the truth. After all, she never came forward until after *The American Spectator* had branded her as one of Bill's bimbos, and all she wanted Clinton to do was confirm she had said no. But to avoid going to a jury and still win, we must concede, for the sake of argument, that Jones is telling the truth and persuade the judge that we should win anyway as a matter of law.

So much for strategy. Let's move on to the legal issues we're going to use to get our client off.

Legal issues come in two flavors—substantive and procedural. Both are important, but the substantive wins more ball games and the procedural can be boring for a lay person, so let's move right to the substance—sexual harassment, which Jones has labeled "intentional infliction of emotional distress" because she had only six months to file a federal civil-rights claim and didn't. Jones claims that the hotel oral-sex incident was one instance and the other was a job transfer and failure to receive merit pay increases in retaliation for having turned Clinton down.

The hotel oral-sex incident falls under what employment lawyers call the "hostile environment" category of sexual harassment. It is by far the most common complaint and the most misunderstood by the public. The retaliatory job transfer is called quid pro quo sexual harassment, which is Latin for "tit for tat," but you can't say that in court.

LET'S PAUSE BRIEFLY TO CONSIDER THE job transfer and merit pay claim before moving on to what you really want to know—how we're going to get Clinton off without going to trial. Most of what we will need should be found in Jones's personnel file with the Arkansas state government. If it contains a legitimate, non-discriminatory reason for her transfer, we are halfway home. Then all we need to do is find the state employee who made the decision to transfer her and the one who told her about the transfer and have them corroborate what's in the file and testify that no one from the governor's office ever talked to them about Jones.

As for the pay claim, there already have been news reports that Jones received at least one merit increase and three cost-of-living increases in less than two years. If we can prove all this, her

MIKE LUCKOVICH

quid pro quo claim is in deep trouble. She's got to cast serious doubt on our story, either by producing a witness who overheard or saw something from the governor's office about Jones before the transfer or by showing that other employees in jobs just like hers with work records just like hers were not transferred or got better pay increases. If she does, then we may well be facing a jury trial. If she doesn't, then her job transfer and merit pay claims are history, because the judge should throw them out.

HOSTILE ENVIRONMENT WILL BE A TAD trickier to defeat. And doing so won't endear us or the president to his legions of feminist admirers. But our obligation is to our client and, besides, most of those feminists are, in their heart of hearts, really Hillary admirers who quite justifiably think Clinton is scum for cheating on her. Our argument here is that what Clinton is claimed to have done is *not*, repeat *not*, illegal sexual harassment. And the same goes for Sen. Robert Packwood and Justice Clarence Thomas.

Boorish, bad taste, clumsy—but not illegal. Why? Because in 1986, the Supreme Court defined a hostile work environment due to sexual harassment as sexual conduct which "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment."

That's a tougher standard than you think. Here are some examples of situations which courts have found did *not* constitute a hostile environment:

• In the alleged rape of a dispatcher by a sheriff, where a special prosecutor had decided to take no criminal action, the court ruled that a hostile environment was not present because the victim was able to work regular shifts for 10 days after the incident.

• In a case where, after calling her into his office and locking the door, the victim's supervisor twice pressed his body against her so that she felt his erect sexual organ, the harassment was not "sufficiently severe or pervasive."

• In a case where a co-worker made a "verbal sexual advance," touched the victim's breast, and grabbed her buttocks, the conduct was not "sufficiently severe or pervasive," since the victim continued working at the job for nine months.

Isolated incidents like a pubic hair on a Coke can or recounting a pornographic film, as Thomas was accused of doing, pale by comparison. Packwood's clumsy advances and awkward gropings are not much closer. Clinton's alleged conduct is obviously more egregious but still eminently defendable under existing law.

Our real ace in the hole is one fact: It only happened once. No federal court has ever found a single incident to be sufficiently severe to constitute a hostile environment.

We just argue that it wasn't "sufficiently severe or pervasive" to create an abusive working environment or unreasonably interfere with Jones's work performance. Jones worked for Arkansas for another year and a half after her hotel encounter with Bill.

BUT OUR REAL ACE IN THE HOLE, WHAT'S going to get us out of this case quickly, is one additional and critical fact: It only happened once. As one court has said, there is a "nearly universal consensus of federal authority holding that generally a single incident of sexual harassment will not create a hostile work environment." Actually, it *is* universal—not one federal court has ever found a single incident to be sufficiently severe to constitute a hostile environment, even though some federal courts have admitted that a single severe incident—for example, rape or violent sexual assault—*could* do so.

So what's the catch? How can our "no harm, no foul" defense go wrong? Easy. There's always a first time for anything, and the Supreme Court of Michigan has already held that a single incident created a hostile environment. More troubling for Clinton, however, is the single incident that the Michigan Supreme Court found to be sexual harassment. The plaintiff, a veterinary technician, had a five-minute encounter on a couch with the owner of the company, and she conceded he might have mistakenly believed she wanted to kiss him. The owner then grabbed her by the neck and forcibly attempted three times to kiss her, physically restraining her for about one-and-one-half minutes.

By contrast, the incident with Paula Jones lasted at least 15 minutes, but she admits no force was used—he asked (politely, if crudely), and she said no. End of story? Not quite. Jones also claimed that Clinton exposed himself, which is a sufficiently shocking act that you cannot predict in advance how the judge—Susan Weber Wright, a Republican Bush appointee—will react when Jones's lawyers ask her to follow the Michigan case.

What about presidential immunity? You know, "the king can do no wrong"—or, more accurately, the "elected politicians are above the law"—defense. The technical legal phrase is "the Nixon gambit." Should we use it? Well, we could. Some lawyers will do anything—which is why Clinton is not using white rats to defend him. After all, in a collective display of insanity, the U.S. Supreme Court (lawyers all) held in 1982 that Nixon had absolute immunity for official acts committed while in office. So yes, we could argue that our client can't be sued anywhere, anytime, for anything. But it would be wrong, that's for sure.

Here's why. Clinton wasn't in office when it happened, and arguing that soliciting oral sex was an official act would be a stretch, even for a lawyer. Plus, it's a delaying tactic, and it's bad public relations. If we raise immunity and we win, Jones can immediately appeal. If we lose, we can immediately appeal. All that guarantees is that this case is going to be around for the next two years, through the 1996 presidential election campaign. So keep in mind our strategy: It's win, stupid, as

soon as we can. We don't need delays.

On to the tactics. Clinton's lawyer, Bob Bennett, is in the Washington office of a huge New York law firm known for its hardball, take-no-prisoners litigation style. He might well take the same approach here and harass Jones and her lawyers by burying them in paper with motions, briefs, document requests, interrogatories, requests for admissions, and deposition notices—all the weapons in the modern litigator's arsenal. He might well do that, but it would be a mistake. Why? Keep in mind our strategy. We want a quick victory before Jones's lawyers have a chance to take their own depositions—testimony under oath—of Arkansas state troopers, Gennifer Flowers, and other assorted Clinton mistresses.

HERE'S HOW WE DO IT. WE DON'T FILE an immediate motion to dismiss claiming that Jones's complaint is legally insufficient. We could easily lose such a motion, and that wouldn't look good. Instead, we promptly take the depositions of Jones and the Arkansas state employees who ordered her transfer and granted her pay increases. We limit our questions to the oral-sex request, the transfer and merit pay, and whether the hotel incident affected the way she did her job.

We then go to the judge and ask her to dismiss the case on the two substantive legal issues we examined earlier—quid pro quo and hostile environment. We also ask the judge to prohibit Jones's lawyers from taking any potentially embarrassing depositions from troopers or bimbos pending her decision on our request. The judge ought to be receptive. We're conserving the court's resources, and if we lose, the game will go on, and Jones's lawyers will have a shot at taking their embarrassing depositions. But unless there's a smoking gun out there about the transfer or pay increases, or if Jones can prove she was so distraught over the incident she wasn't able to work without undergoing extensive therapy, then Clinton ought to walk—no *illegal* sexual harassment.

There you have it. Even if Clinton's guilty in the hotel oral-sex incident, we get him off the hook; his handlers proclaim his vindication and the lack of "legal" merit in his accuser's case; most people will think he really has been found innocent; a jury of their peers will never get to decide what actually happened between Bill and Paula in that hotel room; we avoid unseemly comparisons to Nixon and accusations about being above the law; the state troopers don't get to tell their pandering stories under oath; Bill's bimbos stay in the closet; and we head off with our fees to the bank. Is this a great country or what? R

Contributing Editor Michael McMenamin is a lawyer in Cleveland who has defended employment cases in 10 states, including Arkansas, and didn't vote for Bill Clinton.

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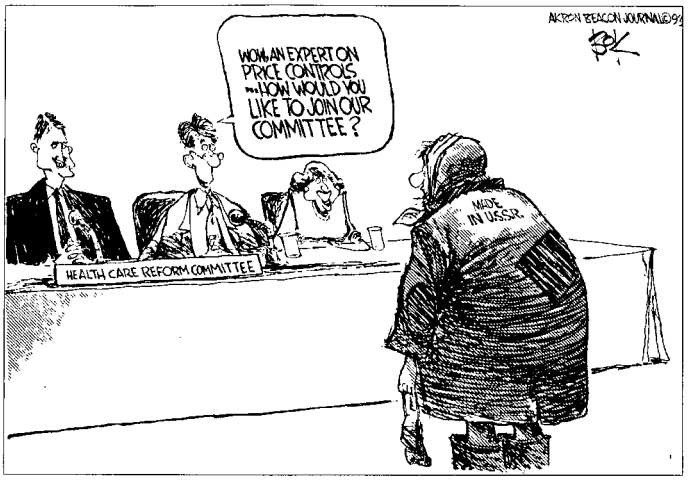
California Scheming

By Steven Hayward and Michael Lynch

A referendum on single-payer health care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WITH ALL EYES FIXED on the growing deadlock in Washington, D.C., the biggest health-care story of 1994 may be emerging a continent away. In California, a sweeping, Canadian-style "single payer" initiative that gathered more than 1 million signatures has qualified for the November ballot. More breathtaking than anything the Clintons dare propose, the California initiative will be a battleground to test both the "health-care crisis" mentality and the voters' eagerness to have a government takeover of health care.

The initiative's ballot qualification coincided with the launching of a national effort by single-payer advocates that features TV spots and full-page newspaper ads. If this long-shot initiative somehow passes in November, Congress and the president may well change their minds about the political feasibility of a federal takeover of the complete health-care system, without the patina of private insurance. The initiative would abolish private health insurance in California and replace it with a state-run "time tested single payer system" to be known as the "California Health Security System."

It is not necessary to reopen the arguments about the performance of Canada's single-payer system (waiting lists, rationing, fudged cost numbers, and so forth) to get at the defects of this initiative, because the most dramatic feature of the measure is not the single-payer system itself but the creation of an elected state health commissioner with immense, even ominous, powers. To label this prospective officer a "health czar" would be an understatement. The health commissioner would have complete authority, with little legislative oversight, to control the estimated $108-billion budget the system would set up (twice the size of California's present state budget). The health commissioner would be granted "any and all powers necessary to implement this Act."

"These broad powers include," the initiative continues, "the power to set rates and promulgate generally binding regulation on any and all matters relating to the implementation of this Act and its purposes." The commissioner will determine how many doctors there shall be, in what specialties, and where they are located. Section 25275 (b) sets as goals "achieving the number, geographic, discipline and specialty distribution of professional providers...needed by the state" and "adjusting, over a period of years to be determined by the Commissioner, the number, geographic and specialty distribution of professional providers to staff underserved areas and communities."

These and other coercive measures can be enforced through the global budgeting and price-fixing powers of the health commissioner, whose powers over the prospective $108-billion health-care budget would be far greater than the governor's powers over the regular $50-billion state budget. The global budgeting power extends not only to operating expenditures for each category of medical specialty but to capital budgets as well. No medical facility may make a capital improvement or establish a new procedure worth more than $500,000 without approval from the health commissioner. The commissioner would regulate the development and implementation of new technology through these capital controls.

THE HEALTH COMMISSIONER'S OFFICE would be complemented by a phalanx of regional administrators and regional consumer advocates, an expert Health Care Policy Advisory Board, and an ostensibly grass-roots Health Care Consumer Council that would really serve as the political base for the elected commissioner. The system would be funded through a new payroll tax, a personal income-tax surcharge, and a $1.00-a-pack levy on cigarettes. These new taxes would amount to about $48 billion; the balance of the health budget would come from consolidating existing federal and state health programs such as Medicare Part B and Medicaid. Global budgets, price controls, a constitutional declaration that health care is a "right," and a generous list of benefits, including mental-health and drug treatment, are all part of the package.

A consortium of left-leaning organizations, including labor, churches, seniors, nurses, a few doctors and pharmacists, Naderite consumer groups, and even the California Teachers Association, is backing the initiative. Out-of-state money has gone to support the California initiative, including $25,000 from a New York City

CHIP BOK

hospital workers' union. Labor union financial support—estimated at more than $500,000 for the signature-gathering drive—was crucial.

But the prime mover behind the effort is Neighbor-to-Neighbor, a grass-roots activist group formed in the 1980s to agitate about Central America. With the waning of the Cold War and the ferment over Nicaragua and El Salvador subsiding, Neighbor-to-Neighbor needed to find a new issue. It settled on health care. One goal is to reinvigorate the fortunes of a single-payer plan on the national level. "Our hope is to provide ballast to the left of Clinton," says Glen Schneider, executive director of Neighbor-to-Neighbor. "This will be a real wake-up call. This will start a true health-care debate with the real options front and center."

THE GRAND STRATEGY OF THE INITIATIVE is clear: bash insurance companies. "If we cut out the insurance industry," says Schneider, "there will be plenty of money for everybody." The initiative's backers assert that a state takeover would save as much as $20 billion a year in administrative costs. These savings would enable the extension of coverage to California's uninsured population, which they claim to be as large as 6 million. Insurance companies, they say, eat up as much as 27 cents of every heath-care dollar in overhead and administrative costs (and high CEO salaries, they usually mention), while Medicare—their chosen comparison—takes only about 2.5 cents of every dollar for administration. The initiative would supposedly cap administrative costs for its system at 4 percent.

Comparing insurance administrative costs—whatever the true figure is (insurance groups claim lower administrative costs than government)—with Medicare administrative costs is a clear case of comparing rotten apples to oranges. One ironic reason that Medicare's administrative cost is so seemingly low is that it has been completely unsuccessful at any kind of cost control. The cost of Medicare has risen at double-digit rates for all but two years. That's one reason why the program, originally estimated to cost just $12 billion in 1990, cost $107 billion instead. With soaring expenditures, administrative costs are bound to be a small ratio, especially since Medicare is essentially a check-writing program and doesn't face the same kind of underwriting and other costs that private insurers do. (See "The Medicare Monster," January 1993.)

More breathtaking than anything the Clintons dare propose, the California initiative will be a battleground to test both the "health-care crisis" mentality and the voters' eagerness to have a government takeover of health care.

Holding up Medicare as the model of administrative efficiency is not the only whopper the backers of the initiative tell. Consider this passage from the preamble to the initiative: "Since people always need health care services, prices for those services often do not respond to normal supply-and-demand market forces.... Price control is therefore necessary to achieve cost control and to make quality health care accessible to all." Such a claim would be dismissed with a hoot if it named a necessity such as food, housing, or clothing instead of health care. Perhaps it is a measure of how mysterious health care has become in the public mind after 30-plus years of heavy government distortion of the medical marketplace that such a claim can be made without a blush.

DONALD COHEN, ANOTHER NEIGHBOR-to-Neighbor spokesman, goes even further: "Single-payer has been portrayed as Big Government, but it is a very free-market, pro-competition system." Although Cohen admits there won't be price competition, "there will continue to be competition in quality of care."

It is not necessary to unpack a homily about "price competition" being at the heart of the very idea of a competitive marketplace to explode this soothing claim. The details of the initiative turn out on close inspection to refute the claims of its supporters. Backers attempt to allay potential fears by claiming that people will still be able to choose their own doctor and that health care will remain predominantly private, including even fee-for-service medicine.

But the initiative provides that the health commissioner may require all fee-for-service care to be coordinated through a designated primary care giver. To get around the problem of fee-for-service doctors adopting assembly-line practices such as are common in Japan (where doctors may see dozens of patients a day in visits that last about two minutes), the initiative gives the health commissioner power to set "a limit on the aggregate annual payments to an individual professional provider."

What this really means—besides a way to set pay scales for the medical profession—is that many ill consumers will find "The Doctor Is Out" signs as physicians achieve their quotas and take extended holidays. Although the initiative's backers claim that medicine will remain private and competitive (on non-price grounds), there is extensive anti-private and anti-profit bias built into the initiative. All capital improvements made through the system's capital-improvements account "shall remain the property of the state of California," thereby giving the system the means slowly to take over private hospitals and clinics. Public health facilities are given priority for capital spending for the first three years of the system, and preferential treatment for "academic medical centers" is built into the initiative.

Other indicators of anti-private bias are more explicit. Any person employed by a for-profit health-care entity or insurance company (or any person with a family member who works for such an entity) is

ineligible to serve on any of the advisory boards created by the initiative.

Finally, the initiative prescribes that for-profit health-care providers "shall have their profits restricted to a fair rate of return to be negotiated with the commissioner and are subject to the same restrictions on capital expansion that apply to all other health facilities." In other words, private, for-profit health providers will be transformed into public utilities.

THE FISCAL LINCHPIN OF THE CALIFORNIA initiative is a payroll tax. The proposed payroll tax, which would operate on a progressive scale of 4.4 percent for firms with fewer than 10 employees, 6 percent for firms with 10 to 24 employees, 7 percent for firms with 24 to 49 employees, and 8.9 percent for firms with more than 50 employees, would raise about $40 billion a year in new revenue.

The proponents argue that most companies will pay less in payroll tax than they spend currently for health insurance, though data from the U.S. Department of Commerce suggest the average cost of employer-provided health insurance in California is 7.5 percent of payroll, less than the 8.9-percent rate that larger companies would pay.

But even if the proponents are right that the payroll tax would cost less than existing private health insurance, it would still be a job killer. First, for the 15 percent of California employers who do not currently provide health insurance, the system would impose an absolute tax increase. Many of these jobs are entry-level positions (especially restaurant jobs) with per-employee operating margins less than the payroll tax rate. These jobs would tend to disappear entirely, or go underground.

Second, there is no exemption or threshold for part-time employees. So the payroll tax will be a significant barrier to part-time employment opportunities, especially within small companies that will be reluctant to add the next employee who will bump them into the higher payroll-tax bracket.

The initiative supposedly guarantees that rationing of health services will not take place and that the health system budget will grow each year only at the rate of inflation and population growth. When expenditures begin to exceed the budget, "mandatory cost controls" kick in, at which time "the Commissioner may request that the Legislature increase appropriations for the Health Security System." At this point, the health commissioner may begin to "establish restrictions or copayments on elective services."

The health commissioner will set "a limit on the aggregate annual payments to an individual professional provider." As a result, many patients will find "The Doctor Is Out" signs.

Nearly every page of the initiative's text offers an eye-popping or budget-busting feature of one kind or another. Benefits include long-term care and free prescription drugs. Doctors and other health-care workers are encouraged, and may eventually be compelled, to unionize and engage in collective bargaining with the health commissioner.

SO WHAT ARE THE PROSPECTS FOR SUCH AN initiative? California voters seem increasingly suspicious of complicated initiatives. Two years ago, California voters rejected by a 2-to-1 margin a far milder "pay or play" initiative that would have required all employers to provide health insurance to full-time employees or pay a payroll tax to a state-run system. That measure was backed by the formidable California Medical Association, which for the moment is sitting out the single-payer initiative.

While national polls have shown more than 30 percent in favor of the single-payer concept, more-recent national surveys, such as a Gallup poll and a *Los Angeles Times* poll (both conducted in mid-April) report a majority against a "government-run" health system. An early poll emphasizing the tax-increase features of the California initiative found that 65 percent of voters reject the single-payer idea, with only 26 percent in support. "This is as close to 'dead on arrival' as a proposition gets," said Robert Nelson, the Republican-oriented Sacramento political consultant who conducted the poll. "It will only get worse once voters really focus on how much it will cost them."

Perhaps. But unlike the "pay or play" initiative, the proponents of the single-payer plan have targeted one of the most unpopular interests in California: insurance companies. There is some precedent for the success of such a strategy. In 1988, a Ralph Nader–inspired grass-roots campaign defeated several well-funded insurance-industry initiatives with the simple slogan, "Another insurance company trick," and passed a monstrous measure, Proposition 103, that created an elected insurance commissioner and attempted to roll back insurance prices by decree.

The single-payer initiative is an attempt at a rerun of Prop. 103. A large infusion of labor-union cash might turn it into a close contest. By the same token, a big loss for the initiative would likely be a major setback for a single-payer system on the national level.

But would a loss also be a setback for other health-care reforms, such as the Clinton or Cooper plans? Or would these become the "moderate" fallback positions? The question that will be raised in the campaign to come is whether the usual sound bites about higher taxes and massive bureaucracy will lead voters to ponder how the supposedly more reasonable reforms will do the same thing, and whether such a controversy has any prospect of awakening among the public an awareness that even for the mysterious world of health care, re-establishing the proper market signals is the right fix. ®

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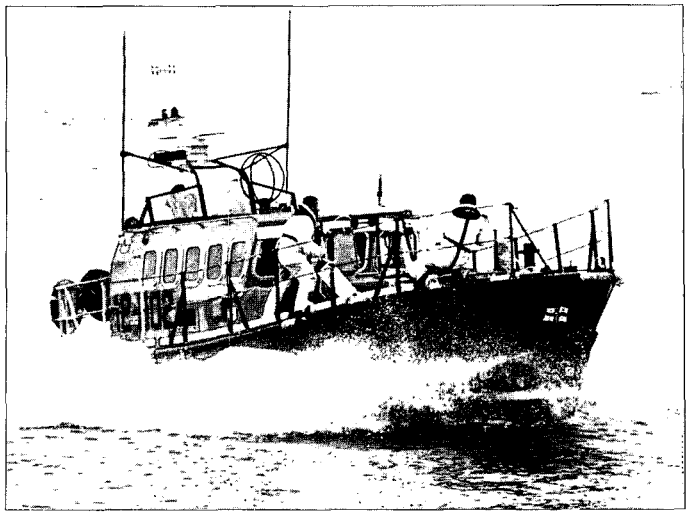
Life Savings

By James L. Payne

For 170 years, a private British organization has been rescuing people at sea.



A British lifeboat: The Royal National Lifeboat Institution saved an average of three lives a day in 1993. It is supported "entirely by voluntary contributions."

IN MAY 1993 THE RACING yacht *Heptarchy*, with a crew of 10, fouled its propeller in a fishing net while trying to get into port in Cornwall, England. Gale winds of more than 60 knots blew the yacht out to sea and knocked it down. Using its VHF direction-finder, the lifeboat *David Robinson* located the *Heptarchy* and connected a line. After a five-hour struggle in turbulent seas, it managed to tow the 56-foot yacht to safety in Falmouth.

The *David Robinson* is one of 272 lifeboats assigned to 210 stations in the British Isles run by the Royal National Lifeboat Institution. The lifeboats are called out some 5,000 times every year to offer assistance in marine mishaps. According to its records, the service saved an average of three lives a day in 1993 and has saved more than 124,000 since its founding in 1824.

But running the lifeboats and paying the thousands of rescue workers does not cost British taxpayers a penny. The Royal National Lifeboat Institution is a private organization, supported, as it proudly says on its letterhead, "entirely by voluntary contributions" and managed by its own trustees and staff. The RNLI will rescue you whether you are rich or poor, whether you have donated to it or not.

Most of the RNLI's rescues these days involve pleasure craft such as the *Heptarchy*. But the service has wide experience. In the north of Scotland, the *Wick* lifeboat was called out in April 1993 to save the cargo freighter *Eilean MoGrhidh* after its engines had failed and the tide was sweeping it out to sea. The tow was quite a feat, since the freighter was 20 times the size of the lifeboat. At Aberdeen, Scotland, in October 1993, an inshore inflatable lifeboat was called out to a trailer park that was under 10 feet of water because of flash flooding. According to the service report, the lifeboat crew rescued 12 residents, three cats, and one American visitor.

THE LIFEBOAT SERVICE WAS BORN IN the days when Britons believed in independent, voluntary action. In 1789, a ship foundered in a storm in the mouth of the river Tyne. Spectators on shore watched in horror as crewmen fell into the sea and drowned; no one was able to rescue them. Moved by the tragedy, local philanthropists offered a two-guinea prize for a lifeboat designed to withstand heavy seas. Several inventors came forth with ideas, and the result was a long rowboat pointed at both ends and buoyed by 700 pounds of cork. One by one, local lifeboat stations were established along the coast.

In 1823, Sir William Hillary, himself a lifeboatman on the Isle of Man with 305 rescues to his credit, wrote an "Appeal to the Nation" calling for the establishment of a national lifeboat organization supported by voluntary subscriptions. London merchants took up the idea and organized the Royal National Lifeboat Institution in 1824. The RNLI eventually set up stations all around the British Isles, including Ireland and Northern Ireland.

The RNLI is unusual among British charities in the loyalty and affection it inspires. It has some 2,000 fund-raising branches led by volunteers who organize a multitude of events, from penny races, bike rides, and tugs of war to golf tournaments and garden shows. The donors feel the RNLI is special. In a pub in Lympstone, Devon, I struck up a conversation with Ian Smith, a computer programmer for an insurance company and an amateur yachtsman. When I told him I was in England studying voluntary groups, he wrinkled his nose.

"There's only one charity I respect," he declared. "As a matter of fact, it's already in my will." I'd been around the nonprofit scene in Britain long enough to know before he said it that Smith was talking about the RNLI, which is known for its probity. Most other national charities in Britain are partially funded by the government—though they try to hide this fact—and many lobby the government for more money.

THE IDEALISM ASSOCIATED WITH BEING "entirely voluntary" helps motivate volunteers for the lifeboat crews. At Exmouth, a town on the Southwest coast,

station treasurer Jack Stapley reports a standing crew of 21 volunteers and nine more wanting to serve. "We always have a waiting list," he says. One volunteer went on a crash weight-loss program to meet the physical requirements for crew membership. The eagerness to volunteer is remarkable considering that 435 crew members have died in the line of duty since the RNLI was founded.

The idealism associated with being "entirely voluntary" helps motivate volunteers for the lifeboat crews. The eagerness to volunteer is remarkable considering that 435 crew members have died in the line of duty since the RNLI was founded.

Stapley was involved in his first fund-raising drive for the RNLI at age 4. As an adult, he served as a crew member until he reached the mandatory retirement age of 55; he has been the station's treasurer since leaving the crew 15 years ago. One of his biggest jobs is tending the 140 miniature lifeboat-shaped collection boxes placed in the stores and pubs in the Exmouth area, which raise $7,500 a year.

THE NATIONAL OFFICE OF THE RNLI HAS recruited many professionals from business and marine careers who donate their services as board members. While the local chapters manage station operations and local fund raising, the national office establishes standards, runs training and testing programs, and designs and builds the high-tech lifeboats (the newest of which are self-righting, capable of 25 knots, and cost more than $1 million each).

Since the 1890s, left-wing activists have pushed to have the RNLI nationalized on the ground that the state ought to run all public services. These campaigns always founder on the hard rocks of fact: The RNLI beats government emergency services hands down. Its naval architects and managers have designed and built a fleet of rescue boats that are the most advanced in the world (when they are retired at their British stations, the secondhand boats are purchased by coast- guard agencies of other countries, including Australia, New Zealand, and Uruguay). The RNLI's voluntary income ($92 million in 1992) easily covers its costs, and its reserve fund of $223 million could keep the service going for more than three years. Compare this financial picture to the fiscally strapped government, which frequently curtails state services such as hospitals and libraries for lack of funds.

Then there is the advantage of volunteers, who cost less than full-time government staff and are more dedicated to serving the public. In most of Britain's government-run emergency services, employees have formed unions that go on strike, interrupting the vital services of ambulances, fire brigades, and hospitals. A strike at the RNLI is hard to imagine. Unlike a government agency, a voluntary group like the RNLI cannot force people to pay for its services. It appeals to the public's generosity, and it can do so only by behaving in a generous way itself. A strike by the RNLI would destroy the public good will on which it depends. The crew members are paid only a small ($11) stipend on the days they go out. Their example inspires the paid mechanics and other staff members, who would never think of letting the public down by a deliberate act of disruption.

Reviewing all these advantages, the government's own officials down through the years have quietly agreed with the sentiment expressed by Jack Stapley when I asked him why the RNLI avoided government support: "We feel service would deteriorate if it was government-funded." R

James L. Payne is the author of Costly Returns: The Burdens of the U.S. Tax System *(ICS Press). He recently spent a year in Britain researching voluntary organizations.*

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A Dose of Reality

By Carolyn Lochhead

Why ClintonCare is ailing

WASHINGTON ENTERED THE HOT summer months in a fever over health-care reform, the centerpiece of the Clinton presidency and potentially the biggest government program since Social Security. But what started in the Clinton campaign's "war room" as a sure-fire way to lure the electorate back under the Democratic tent is with astonishing rapidity assuming the shape of a political debacle.

How long ago that evening last fall now seems, when a vibrant Bill Clinton stood before the nation and a joint session of Congress, waving in his hand a piece of plastic that looked just like a credit card. With this card, Clinton promised, 38 million more Americans would get health insurance, with better benefits than the richest *Fortune* 500 plans, for less money, with savings in fact so vast that the deficits that haunt the nation's financial stability would begin to vanish.

For all the endless talk of gridlock stymieing government, and special interests corrupting it, the political process seems to be working. Rebellion by the health-care industry, by American business, and most of all by the constituents of every member of Congress may be cracking the charming demagoguery of false promises and patently contradictory claims. Rep. Sam Farr, a freshman liberal Democrat from California who supports a nationalized health-care system, says his constituents have told him: "I like what I've got. Don't change it. And for God's sake, don't let the government run it."

Once the fanfare of Clinton's announcement had passed, disturbing details began to come out. The government would dictate to medical students whether or not they could specialize. People would not be allowed to buy private insurance that duplicated the government package.

Health-care czar Ira Magaziner had adopted a classic central-planning approach, masterminding a top-down restructuring of the entire health-care sector. Designed to disguise a government takeover of medicine, the plan's complexity created a different but very serious political problem. The plan baffled nearly everyone. It was difficult if not impossible to explain to the public, even as it offered hundreds of ripe targets to attack.

HENRY PAYNE

While Clinton claimed his plan would cut waste by streamlining the messy health-care market, crazy flow charts began appearing to illustrate the stupendous Rube Goldberg bureaucracy Magaziner had designed. The monstrous scope of the undertaking became apparent. Duane Garrett, campaign manager for Sen. Dianne Feinstein, a Democrat running for re-election in California, recently put it this way: "Any health-care bill, because of the huge stakes, is going to have some impacts that people aren't completely prepared for."

Respected, nonpartisan experts began to issue warnings. Analysts for the American Academy of Actuaries said it is "very likely that the financial estimates will be off," leading to "higher taxes to cover the deficit." The Committee for a Responsible Federal Budget warned that the government chronically underestimates costs. "Costs are already growing too fast," the group said. "Adding more demand and new funding...could be like throwing gasoline on a fire."

The Congressional Budget Office not only found the White House deficit projections off by tens of billions of dollars, it also warned that "estimates of the interactive effects of so many complex changes to an industry that encompasses one-seventh of the economy are highly uncertain."

By politicizing medicine, every element of the Clinton plan—from abortion coverage to cigarette taxes—excited fierce debate. Every interest group from the Children's Defense Fund to Chrysler Corp. promoted an agenda. Shock troops of dentists, drug counselors, and chiropractors converged on Washington.

BY MID-JUNE, WITH PUBLIC SUPPORT RAPidly eroding, the political ground began shifting fast. Democrats remained deadlocked over fundamental issues in the major health-care committees. Feinstein quietly removed her name from the Clinton bill. House Majority Leader Richard Gephardt (D-Mo.) told reporters that it might be OK if Congress postponed health reform to next year.

At a June press conference in the hallway of the Dirksen Senate Office Building, Sen. Edward Kennedy (D-Mass.) hailed as a breakthrough his labor committee's passage of a Clinton-style bill. Maryland Democrat Sen. Barbara Mikulski stood by his side and claimed to be "making history." But when another door opened and out came Finance Committee Chairman Daniel Patrick Moynihan (D-N.Y.), joined by ranking Republican Robert Packwood of Oregon, the pack of some 40 reporters suddenly turned heel, abandoning Kennedy to the C-Span cameras. The real news was that Moynihan had given up trying to design a bipartisan bill that would pass the Senate, introducing instead another Clinton-like version that

Packwood and other liberal Republicans swiftly denounced as unacceptable. The Republicans had clearly closed ranks.

Conservative Democrats joined in. The bill "starts with too much government intervention," said Oklahoma's David Boren. "The worst thing we can do for the country is press forward with a bill that is on a party-line basis." The reason, he added with a not-too-subtle reference to potential losses in November, is that "then you subject the whole direction of health care to possible reversal or sharp changes in direction every two years."

But predictions are dangerous on Capitol Hill. Democrats may still pull off a major health-care bill, especially if they get away with the discordant reasoning that continues on most major fronts:

• *Deficit control.* One of the main reasons for tackling health care, the White House originally said, was that Medicare and Medicaid threaten to bankrupt the country. True enough. If all other spending were cut enough to balance the budget today, these two health-entitlement programs would push annual deficits back up to $300 billion within a decade, warns the Committee for a Responsible Federal Budget. By 1998, health care will surpass Social Security and defense as the biggest item in the federal budget, alone consuming a quarter of federal spending. Yet the main health plan now before the House Ways and Means Committee calls for a huge expansion in...Medicare. The plan would roughly double Medicare to cover between 60 million and 75 million people.

• *Employer mandates.* The plans advertise themselves as largely free of new taxes. But the chief financing mechanism to extend health insurance to everyone is the employer mandate, which would require firms to pay 80 percent of their workers' health-insurance costs. The mandate was chosen precisely because it is a hidden payroll tax. Levying a direct tax that large is politically unthinkable.

But employers do not "pay" for insurance. They offer it as part of the wage package. Mandating it will reduce money wages or employment. The CBO said the mandate is a tax. Proponents of nationalized health care, such as Ways and Means Chairman Sam Gibbons (D-Fla.) and health subcommittee Chairman Pete Stark (D-Calif.), say it is a tax. But because the tax appears to be levied on employers and not workers, it retains some public appeal.

• *Cost containment.* The administration, hoping that constant repetition of patent falsehoods will erode the truth, has insisted that its plan has no price controls. Congressional Democrats have adopted the term "cost containment" for the variety of price controls that are a key element of the major Democratic bills offering insurance to all Americans. Price controls remain in the legislation despite strong Republican opposition because they are the only thing standing between expansion of coverage and fiscal meltdown.

PRICE CONTROLS DO NOT WORK. THE GOVernment cannot contain by fiat an explosion in health-care demand. If controls hold, non-price rationing will set in, sharply reducing the quality of care. If the resulting political pressures become too intense and the controls are eased, costs will skyrocket. In fact, price controls now operating in Medicare and Medicaid are causing the cost shifting that is helping to drive up the price of private insurance.

As economists have been saying for decades, the health-care market is not functioning properly. As time goes by, the dysfunction gets worse. The source of the problem is the tax code. The tax exclusion of employer-provided health insurance ties health care to the workplace, insulates patients and providers from cost, drives up demand, fosters inequities, and limits individual choice.

In classic fashion, Congress and the administration are trying to remedy a problem caused by government with more government. But should they fail this year, perhaps Clinton, who ignited this giant debate, will have done the nation a great service after all—if the lessons learned clear a path toward true reform. R

Contributing Editor Carolyn Lochhead is Washington correspondent for the San Francisco Chronicle.

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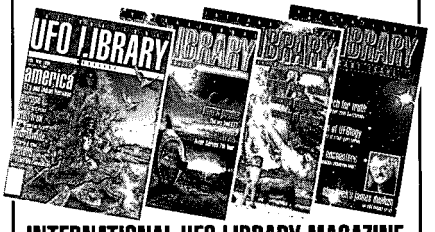

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Bad Words

By Jacob Sullum

Hate Speech: The History of an American Controversy, by Samuel Walker, Lincoln, Nebr.: University of Nebraska Press, 217 pages, $11.95 paper

"Speech Acts" and the First Amendment, by Franklyn S. Haiman, Carbondale, Ill.: Southern Illinois University Press, 103 pages, $17.50

Kindly Inquisitors: The New Attacks on Free Thought, by Jonathan Rauch, Chicago: University of Chicago Press, 178 pages, $17.95

MORE THAN A CENTURY AGO, John Stuart Mill noted that uncertainty is not the only reason to support open debate. "However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false," Mill wrote in *On Liberty*, "he ought to be moved by the consideration that however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth."

Mill's observation applies to the belief in free speech no less than any other belief. A commitment to freedom of expression is strengthened by controversy and weakened by complacency. So although taking free speech for granted in the United States might be considered a point of pride, it is also a danger.

Most Americans have a warm, fuzzy feeling about the First Amendment, the kind exuded by the Norman Rockwell painting that shows Joe Average rising from his chair at a public meeting to speak his mind. Judging from Joe's facial expression and the reactions of the people around him, he is not saying anything the least bit offensive or threatening. Maybe he is asking for a new stop sign, complaining about an unfilled pothole, or suggesting a bake sale to raise money for the high-school basketball team. Whatever it is, the chances are he'd be able to say it without a constitutional guarantee.

By challenging this banal, uncomplicated view of the First Amendment, the academics and activists who campaign against hate speech and pornography may do us all a favor. The positive results of the renewed drive for censorship include Samuel Walker's *Hate Speech*, Franklyn S. Haiman's *"Speech Acts" and the First Amendment*, and Jonathan Rauch's *Kindly Inquisitors*—three books that will help supporters of free speech transform dead dogma into living truth.

All of these books remind us that freedom of speech is not a settled issue. Historically, the idea that government should not punish people for what they think or say is a relatively recent development, and many millions of people around the world—including religious fundamentalists and authoritarians of various kinds—still do not accept this principle. They have what they consider very good reasons for rejecting freedom of speech, and they are not about to be swayed by Norman Rockwell paintings or pious celebrations of the First Amendment.

In *Hate Speech*, Walker, a professor of criminal justice at the University of Nebraska and a historian of the American Civil Liberties Union, traces the development of First Amendment law since World War I. He shows that the movement to ban bigoted expression is not new. Since the 1920s, local and state governments have tried to suppress the activities and publications of various racist, anti-Semitic, and anti-Catholic groups. Supporters of censorship have argued that bigoted speech tends to cause violence and disorder.

The censors' arguments were especially strong in the '30s, when fascist organizations staged deliberately provocative demonstrations. Mindful of the tactics that had brought Hitler to power, advocates of anti-fascist measures argued that Nazis should not be permitted to take advantage of the civil liberties they would destroy once they were in charge. Opponents, including the ACLU, drew a different lesson from Nazi Germany: that constitutional rights are the best guarantee against tyranny and the best protection for members of minority groups.

Black and Jewish organizations that initially favored the suppression of racist and anti-Semitic speech eventually came to agree with the ACLU's position. Walker

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"WELCOME TO THE UNIVERSITY. I'M YOUR FACULTY ADVISER. THIS IS YOUR DORM ROOM. THAT'S YOUR STUDY DESK. AND BORIS HERE WILL BE YOUR THOUGHT POLICEMAN."

HENRY PAYNE

argues that their experience in fighting discrimination convinced them censorship was a mistake: "Their greatest successes came through constitutional litigation on behalf of individual rights. Thus the advancement of minority *group* rights was pursued through litigation based on claims of *individual* rights to equal protection, freedom of speech and assembly, and due process of law. Any restriction on individual rights was seen as a threat to the entire fabric of constitutional rights."

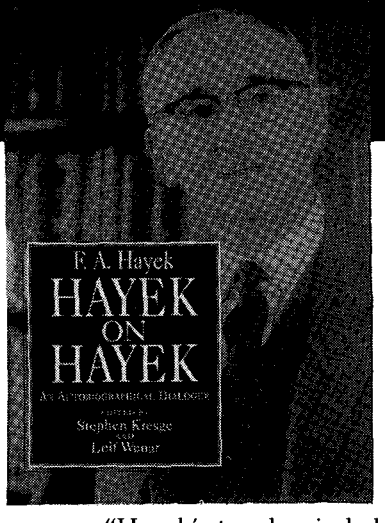
Without a strong constituency, Walker says, the movement to censor hate speech petered out. But it left behind a significant legacy. Contemporary advocates of censorship can draw on the work of predecessors such as Karl Loewenstein, a political scientist who argued in the late '30s that cutting corners on civil liberties is sometimes necessary to preserve democracy, or David Riesman, the legal scholar and sociologist who developed the idea of "group libel" in the '40s. And they can cite the U.S. Supreme Court's 1942 decision in *Chaplinsky v. New Hampshire*, which sanctioned the prohibition of "fighting words": words that "by their very utterance inflict injury" or that "tend to incite an immediate breach of the peace." They can also point to agreements such as the International Covenant on Civil and Political Rights, which says: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Walker notes some interesting parallels between the current arguments for banning hate speech and the arguments heard in the '30s and '40s. Richard Delgado's view of hate speech as a tort (the intentional infliction of emotional distress) and Charles Lawrence's view of hate speech as a form of assault are both reminiscent of the reference in *Chaplinsky* to words that "by their very utterance inflict injury." Mari Matsuda's notion that the danger of hate speech depends upon who says it to whom under what circumstances is similar to David Riesman's idea that context determines whether offensive speech should be tolerated.

Although Walker's explanation for the decline of the movement to suppress hate speech in the '50s is plausible, he falls short in explaining the movement's revival in the '80s, when many colleges and universities adopted restrictions on speech in the name of diversity. "In the 1980s there was an apparent resurgence of racism—or at least its overt expression—across American society," Walker writes. He later describes specific incidents, but he does not offer any evidence of a "resurgence." Furthermore, some of the examples he cites—"the now famous Willie Horton advertisement," *The Dartmouth Review*'s feud with music professor William Cole—are hardly clear cases of racism.

"On college and university campuses in the 1980s," Walker writes, "there was a disturbing pattern of attacks—verbal and physical—on minority group students." Later he refers to "a frightening rash of racist incidents," but he concedes: "It is impossible to say definitively whether there was a real increase in racist events on campus or whether simply more were being publicized. There are no systematic data on such cases." Walker's main source of information about racist incidents at colleges and universities is *Campus Ethnoviolence...and the Policy Options*, published by the National Institute Against Prejudice and Violence. The booklet, by sociologist Howard J. Ehrlich, includes data from campus surveys and a list of incidents that occurred in 1986, 1987, and 1988, but it does not show a rise in racist activity.

Furthermore, Ehrlich is even quicker to cry racism than Walker is. In a follow-up report published in 1992, he says "the role of right-wing and highly conservative organizations has been a somewhat under-



HAYEK ON HAYEK

An Autobiographical Dialogue

F. A. HAYEK

Edited by Stephen Kresge and Leif Wenar

"This marvelously readable book provides a new and different window on the life and thinking of F. A. Hayek, arguably the most influential economist of this century."–Tom Peters

"Hayek's tough minded approach to welfare reform and his belief that private enterprises should be allowed to compete with government make his views timely. In this feisty self-portrait, splicing autobiographical sketches and selected interviews, the 1974 Nobel Prize winner settles the score with Keynes and Laski, discusses his affinity for his adopted country, Britain, and delves into monetary policy."–*Publishers Weekly*

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stated dimension of campus ethnoviolence." In this section he lumps together the centrist National Association of Scholars and the conservative Madison Center for Educational Affairs with the White Student Union. "These organizations function (sociologically) to provide the intellectual and moral justification for social inequalities," he explains. "They promote values of individualism, meritocracy, and hierarchy that are essentially elitist." Thus Ehrlich believes that the sinister forces of individualism and meritocracy encourage ethnoviolence.

AT THIS POINT YOU MAY BE WONDERING what, exactly, Ehrlich means by "ethnoviolence." It isn't what you might think. He writes:

"There is, in law and folkways, a distinction between physical violence and psychological violence. The Institute makes no such distinction and, in fact, regards it as a conceptual error. Harassment and intimidation are generally motivated by an intent to inflict psychological injury. Further, such injury may have longer-lasting consequences for the victim than a physical assault. Accordingly, the definition of violence used here includes such verbal and interpersonal acts as harassment, ridicule, threats, insult and ethnic slurs."

The trick of transforming speech into "verbal acts" of "psychological violence" is the subject of Franklyn S. Haiman's book. *"Speech Acts" and the First Amendment* is a sharply focused rebuke of the idea that certain kinds of speech are not really speech and therefore fall outside the scope of the First Amendment. Haiman, a professor of communication studies at Northwestern University and a vice president of the ACLU, recognizes that this sort of reasoning threatens the distinction between word and deed that underlies the liberal tolerance for diversity of opinion. "Speech is not the same as action," he writes, "and if it were, we would have to scrap the First Amendment." He carefully dissects the major rationales for treating offensive speech like a crime or tort.

Haiman writes: "What has converted speech into a speech act for those who choose to define it that way—be it fighting words, obscenity, racist slurs, orders, or threats—are the ideas or meanings that have been communicated to persons who understand them. One can call it an *act* if one wishes to—as Humpty Dumpty in *Through the Looking Glass* observed, you can name anything whatever you want to—but it is essentially a *symbolic*, not a *physical*, transaction. And though it is true that symbols can, and commonly do, arouse physiological as well as mental responses in their audience, the mental response comes first and mediates what follows. Without a response of the mind, nothing follows, for nothing has been comprehended."

Most Americans have a warm, fuzzy feeling about the First Amendment, the kind exuded by the Norman Rockwell painting that shows Joe Average rising from his chair at a public meeting to speak his mind. Judging from Joe's facial expression and the reactions of the people around him, he is not saying anything the least bit offensive or threatening.

Haiman therefore rejects the idea of "situation-altering utterances" (such as orders or promises), noting that something beyond mere words—at the very least, the listener's interpretation—is always required for the utterance to have an effect. Similarly, he observes that the impact of fighting words and incitement hinges on the reactions of the people to whom they are addressed. The target of a racial epithet has to understand the message and decide how to respond—whether with silence, a rejoinder, or a fist. The same is true of a rabble-rouser's audience. When a conscious mind intervenes between speech and action, nothing is inevitable.

In his chapters on hate speech and sexist speech, Haiman criticizes the analytical sloppiness of theorists who confuse metaphor (hearing an epithet "is like receiving a slap on the face," watching pornography is like "the sex act itself") with reality. And he notes the danger of punishing people for inflicting emotional distress, which can never be verified or measured: It is literally all in the victim's mind.

Nevertheless, Haiman tries to rescue the concept of "hostile environment" sexual harassment, which often hinges on how speech makes an employee feel. And although he recognizes the free-speech issues raised by laws that punish crimes more severely when they are motivated by bigotry, he concludes that "the dangers that hate crimes pose to society" outweigh "the relatively minimal intrusions into the First Amendment arena that a carefully drafted enhanced-penalty law may entail."

Haiman's conclusions about sexual harassment and hate-crime laws illustrate a basic problem with his view of free-speech rights. "I do not claim that because freedom of speech is implicated it will necessarily prevail over all other possible competing interests," he writes. "Some symbolic behavior may be so harmful that we are justified in restraining it, but not because a court or legal theorist has labeled it a speech act entirely beyond the purview of the First Amendment."

Thus Haiman would follow the Supreme Court's usual approach of "weighing" freedom of speech against other factors. But this sort of calculus opens the door to all manner of arbitrary preferences and evaluations. Indeed, hate-speech censors could very well concede that bigoted expression "implicates" the First Amendment but argue that it is "so harmful that we are justified in restraining it." Admittedly, it is harder to ban speech when justification is required. But given what has passed for justification in the areas of ob-

scenity and commercial speech, that barrier can be easily overcome.

In *Kindly Inquisitors*, Jonathan Rauch weighs in on the positive side of the cost-benefit analysis that Haiman would apply to speech. Rauch, a contributing editor at *National Journal*, offers an eloquent elaboration of Mill's argument that the pursuit of knowledge depends on free speech. The "liberal social system for sorting truth from falsehood," he writes, rests on the principle that the "checking of each by each through public criticism is the only legitimate way to decide who is right." That principle of "liberal science," the basis of Western intellectual progress since the Enlightenment, is today threatened by egalitarians who consider it elitist and humanitarians who consider it cruel.

Rauch concedes much of what the egalitarians and humanitarians have to say. Liberal science does indeed exclude certain people (those who refuse to play by the rules), and it does indeed hurt people's feelings (by rejecting their ideas). But he argues that any attempt to avoid those consequences would destroy the best system human beings have ever come up with for generating knowledge. "Let us be frank, once and for all," he writes. "Creating knowledge is painful, for the same reason that it can often be exhilarating. Knowledge does not come free to any of us; we have to suffer for it." To the people who are offended or feel left out, he says: "Too bad. You'll live."

Like Haiman, Rauch firmly resists the sophistry of those who decry "verbal violence," such as the University of Michigan law professor who said, "To me, racial epithets are not speech. They are bullets." Rauch writes: "My own view is that words are words and bullets are bullets, and that it is important to keep this straight. For you do not have to be Kant to see what comes after 'offensive words are bullets': if you hurt me with words, I reply with bullets, and the exchange is even."

Rauch is good at anticipating his opponents' counter-arguments, and he responds to them at length. He frequently returns to the same point: No centralized authority can reliably distinguish between the sort of speech that is useful, and therefore should be allowed, and the sort of speech that only causes anguish, and therefore should be banned. Knowledge making has to be left to the scattered judgments of many minds, the "checking of each by each," with the understanding that "no one has personal authority" and "no one gets the final say."

As Rauch acknowledges, liberal science has much in common with a market economy. Both are forms of spontaneous order in which the participants follow certain basic rules but no one dictates the outcome. Both are defined by process rather than results. But there is more than an analogy here. The basic rules of a market economy, established by property rights and contract, make it possible to exercise freedom of speech. They allow me to speak on my telephone, write on my computer, burn my flag, and shout "fire" in my living room. But they forbid me to speak on *your* telephone, write on *your* computer, burn *your* flag, or shout "fire" in *your* living room, unless I have your permission.

Under a free-speech framework grounded in property and contract, the government may prohibit only speech that violates someone else's rights. That would include the speech involved in acts of fraud ("I swear, it's a Rolex") and extortion ("Give me your wallet, or I will pummel you to death"). It might include defamation and copyright violations, depending upon your view of reputation rights and intellectual property rights. But it certainly would not include hate speech, pornography, sexual harassment, truthful advertising, conspiracy, or incitement.

This approach, familiar to libertarians but foreign to most defenders of the First Amendment, avoids the problem of weighing the costs and benefits of speech on a case-by-case basis. It offers a much-needed principle to distinguish between proscribable and protected speech. It is not perfect, and it may not be the only workable solution. But until civil libertarians address the issue of where free speech ends and why, their response to the censors—however thoughtful and trenchant—will never be completely satisfying. R

Jacob Sullum is managing editor of REASON.

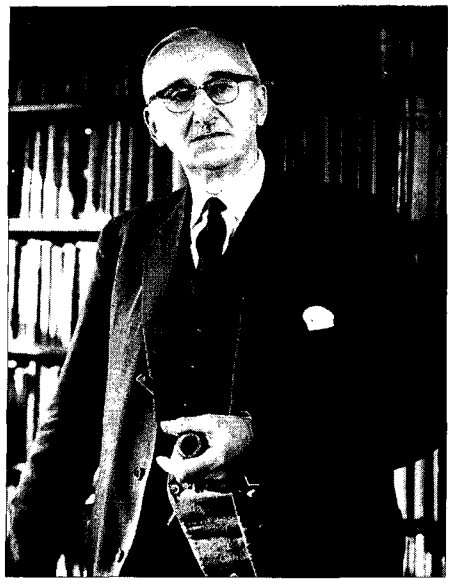
The Persuasive Life

By Donald N. McCloskey

Hayek on Hayek, edited by Stephen Kresge and Leif Wener, Chicago: University of Chicago Press, 170 pages, $27.50

The simplest mark of a comedy is a happy ending. In the late 1940s, as the notorious author of *The Road to Serfdom*, estranged in marriage, Friedrich Hayek did not view his life as a comedy. Yet it ended in 1992 on the whole happily. An anti-socialist born in Vienna in 1899 who saw socialism triumph on the left, right, and center, he flourished into his 90s, and through communism's collapse. An economic theorist regarded until 1945 as the equal of Keynes, yet who five years later was spurned for an appointment in economics at the University of Chicago, he lived to get a Nobel Prize in the subject and to see his ideas again taken seriously. It's a sweet story, and a painless way to begin reading Hayek.

Stephen Kresge is the general editor of *The Collected Works of Hayek*, being published by the University of Chicago Press in 19 volumes, of which this book is a supplement. Its two sources are autobio-



Friedrich Hayek: Out of step with the erotic fascism of prediction and control

graphical notes by Hayek himself and numerous interviews, some published (one by Thomas Hazlett in REASON in July 1992, shortly after Hayek's death). Though Kresge and Wener have worked diligently at the weaving, the result has disproportions. The index of persons, a good idea, is uneven and inaccurate. The long and chatty introduction by Kresge is worshipful. Hayek said thus and such, and "Einstein has said much the same thing." The portraits include one of our hero's great-great grandfathers. Altogether it's an unsteady book.

Yet it's the best route to Hayek I know, much better than Hayek himself. Reading the great man can be a trial. Hayek said the introduction and the first couple of chapters of *The Road to Serfdom* were the best writing he did, as writing. Here is the opening sentence of the introduction: "Contemporary events differ from history in that we do not know the results they will produce." The concluding sentence: "It was the prevalence of socialist views and not Prussianism that Germany had in common with Italy and Russia—and it was from the masses and not from the classes steeped in the Prussian tradition, and favored by it, that National Socialism arose." The prose of his academic books in not up to this standard.

Hayek himself explained why he was such a poor writer. Some people, unlike him, "are able to restate chains of reasoning that they have once learnt," and they are the good writers—the Keyneses and Schumpeters of this world. He, on the other hand, "had painfully to work them out anew almost every time."

Further, Hayek's kind of working out did not lend itself to storytelling. He was a seeker after patterns, metaphors, timeless structures. Not a page of Keynes or Schumpeter lacks a story. It's hard to find one in Hayek's books. Aside from the story of socialism's rise, expressed abstractly, Hayek had no tales to tell. He made even evolution sound boring.

APPROACHING HIS THOUGHT THROUGH THE story of his life, then, is a better idea. For example, Hayek said that he would have become, like his father, a biologist but for the timing of World War I. As an Austrian officer on the Italian front he "served in a battle in which eleven different languages were spoken. It's bound to draw your attention to the problems of political organization." He was not a superb student at university, being too undisciplined and slow. Contrast again Keynes and Schumpeter, who remind one of Thomas Mann's description of the brightest high-school boys in Germany: "small, ambitious lads, far ahead of their age, who were brilliant in subjects that could be got by heart."

Hayek's thinking by his own account often came from his slow-witted attention to the very words: "in that process I often discovered the flaws or inadequacies of the generally held views." He attributed one of his main ideas to reflection on the redundancy in the economist's phrase, "given data" (as in "assume a given can-opener"), a subject of merriment around the London School of Economics. "That led me, in part, to ask to whom were the data really given. To us, it was of course to nobody....That's what led me, in the thirties, to the idea that the whole problem was the utilization of information dispersed among thousands of people and not possessed by anyone."

The fulcrum of the Hayek *bildungsroman* is the triumph and disaster of *The Road to Serfdom*, published in Britain in 1944. Suddenly famous in the United States on the strength of a skillful condensation in *Reader's Digest*, Hayek was surprised to be rushed off on a book tour, speaking to thousands. He notes, "I discredited myself with most of my fellow economists by writing *The Road to Serfdom*, which is disliked so much." That the book alienated so many economists, especially in the United States, shows how optimistic the average egghead was about socialism at the time and how cross when his optimism was questioned. Much looser books by socialists such as R.H. Tawney—an egregious book on China in 1932, for example—were taken seriously as scholarship.

Hayek wrote the book when there were 12 democracies left in the world, and prophets like Anne Morrow Lindbergh were saying that totalitarianism, after all, had some good points and was anyway the wave of the future. From the other side, in 1945 Charles Merriam and Maynard Krueger at the University of Chicago argued optimistically with Hayek that "the political process" would overcome socialism's flaws. It's how we thought in that bright dawn before Vietnam, urban renewal, the war on drugs, and Clinton's demand-side health reform. Greater fools we.

A FELLOW AUSTRIAN SHOWS UP HAYEK'S isolation. Joseph Schumpeter's book of 1942, *Socialism, Capitalism, Democracy*, did not admire socialism, but it did not argue against its rise. The book became fashionable with statists like Merriam and Krueger. Schumpeter was a rhetorical fatalist. Hayek notes that, like many modernists, "Schumpeter had, in the last resort, really no belief in the power of argument. He took it for granted that the state of affairs forces people to think in a particular manner....Schumpeter's attitude was one of complete despair and disillusionment over the power of reason."

Schumpeter had written in 1942, "The case for capitalism...could never be made

simple. People at large would have to be possessed of an insight and a power of analysis which are altogether beyond them. Why, practically every nonsense that has ever been said about capitalism has been championed by a professional economist." So he surrendered to fate—unlike Hayek, who argued and argued and argued with the socialists about economic histories and economic futures.

Like an early 19th-century liberal, Hayek believed throughout in the power of argument—as does, say, Milton Friedman. The pessimists about argument like Schumpeter and George Stigler look clever at the time, men of the world not fooled by mere words, but in the long run they join the greater fools. In *A History of Economic Analysis*, on which he was working when he died, Schumpeter put the clever, unargued case this way: "We may, indeed, prefer the world of modern dictatorial socialism to the world of Adam Smith, or vice versa, but any such preference comes within the same category of subjective evaluation as does, to plagiarize Sombart, a man's preference for blondes over brunettes." Finely put; so much cleverer than Hayek's leaden prose (Stigler was a better writer than Friedman, too). But in the long run it is fool's talk. Words matter.

HAYEK'S OPTIMISM DID NOT EXTEND TO scientific method. Unlike Friedman, he did not swallow the modernism of "prediction" as the master virtue in science—perhaps because of his training in biology, which is a pattern-finding discipline. Hayek's ideas were impossibility theorems. He said it is impossible to predict more than pattern in social life. It is impossible to plan production for an entire country. It is impossible to be a socialist and remain a democrat.

"This is, incidentally," he remarked, "a reason why my views have become unpopular." People want predictions—of the coming Great Depression of 1990 (I bought Ravi Batra's book the other day for $5.99) or the coming greenhouse catastrophe of 2010—not denials that prediction and control are possible. Friedman and many other economists this century have fallen under the modernist spell, articulated, for example, by Wesley Clair Mitchell in 1924: "In economics as in other sciences we desire knowledge mainly as an instrument of control. Control means the alluring possibility of shaping the evolution of economic life to fit the developing purposes of the race."

More than any economist, Hayek was out of step with such erotic fascism of prediction and control. In another way that left him out of step, Hayek disagreed with

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his predecessor as doyen of the Austrian School, Ludwig von Mises. Hayek gradually realized that he had more in common with the Scottish enlightenment than with the French, and that Jeremy Bentham was the French element in British thought. "I believe I can now...explain why...[the] masterly critique by Mises of socialism has not really been effective. Because Mises remained in the end himself a rationalist-utilitarian, and with a rationalist-utilitarianism, the rejection of socialism is irreconcilable....If we remain strictly rationalists, utilitarians, that implies we can arrange everything according to our pleasure....In one place he says we can't do it, another place he argues, being rational people, we must try to do it."

It's what's wrong with much of modern economic thought, this utilitarian rationalism—in Stigler's political economy as against Friedman's, or in Richard Pos-

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ner's law and economy as against Ronald Coase's. The philosophers and literary people call it the "aporia [contradiction, indecision] of the Enlightenment project," which is to say the contradiction, most plain in France, between freedom and rationality. Hayek was two centuries behind the times, a resident of Edinburgh rather than Paris, an exponent of bourgeois virtue rather than of a new aristocracy of experts. By the end of the 20th century, though, he is old-fashioned enough to be postmodern. You read it here: Hayek has more in common with Jacques Derrida than with Bentham and Comte and Russell. ®

Contributing Editor Donald N. McCloskey teaches economics and history at the University of Iowa. His latest book is Knowledge and Persuasion in Economics *(Cambridge).*

Unsentimental Compassion

By Martin Morse Wooster

The Homeless, by Christopher Jencks, Cambridge, Mass.: Harvard University Press, 122 pages, $17.95

NORTHWESTERN UNIVERSITY SOCIologist Christopher Jencks has always been an interesting, iconoclastic liberal. In the 1960s, he was the left's leading advocate for school choice, championing ideas very similar to those promoted 20 years later by John Chubb and Terry Moe. Over the past two decades, Jencks has shifted his interests from education to welfare, but his intellectual independence and his incisive, powerful style remain unchanged.

Now Jencks directs his attention to homelessness, drawing on resources unavailable to most writers. A Rockefeller Foundation grant enabled a research assistant to spend "hundreds of hours at his computer terminal analyzing Census surveys." And the Russell Sage Foundation not only gave Jencks a one-year fellowship but even sponsored a conference at which various experts gave Jencks advice about his manuscript.

Homeless in America: Christopher Jencks argues that homeless people are more likely to be male, single, alcoholic, drug-addicted, black, and unskilled than the population as a whole.

JONATHAN NOUROK

These grants, and his independent mind, ensure that Jencks has a fresh take on homelessness. While liberals will be comforted by Jencks's conclusion—that the government should spend a great deal of money on the homeless—they are less likely to be soothed by the substance of *The Homeless*. In closely scrutinizing the available data, Jencks neatly demolishes nearly every argument made by homeless advocates.

Here are some of the claims refuted by Jencks:

• *America is suffering from an epidemic of homelessness, with nearly 3 million homeless people on the streets.* Jencks documents that homeless advocate Mitch Snyder made up his numbers and cites a *Nightline* interview in which Snyder told Ted Koppel that his estimates of millions of homeless people "have no meaning, no value."

Using Census Bureau data and studies by the Urban Institute and the Columbia University School of Social Work, Jencks estimates that America had about 125,000 homeless people in 1980 and between 300,000 and 400,000 homeless people in 1987. Since 1987, Jencks says, the number of homeless people has either stayed constant or declined slightly. "Estimates above 500,000," Jencks says, "are considerably harder to reconcile with the available evidence unless one believes that the 'invisible' homeless are very numerous indeed."

• *The homeless are people just like you and me who happen to have a streak of bad luck.* No, they're not, Jencks argues. Homeless people are more likely to be male, single, alcoholic, drug-addicted, and black, and more likely to have limited job skills, than the population as a whole. Homeless people are also more likely to have come from troubled families and to have spent some time in their childhood with foster parents. "If bad luck were the main cause of homelessness," Jencks writes, "most people would be homeless occasionally, but few would be homeless for long. In reality, most people are never homeless, a sizeable number are homeless

briefly, and a few are homeless for long periods."

"The homeless are indeed just like you and me in most respects," adds Jencks. "But so are saints and serial killers." Ignoring the differences between homeless people and Americans who have homes, he suggests, "is to substitute sentimentality for compassion."

• *Reagan administration budget cutters caused the rise in homelessness in the early 1980s by slashing low-income housing programs.* Jencks freely admits that

Liberals will be comforted by Jencks's conclusion—that the government should spend a great deal of money on the homeless. But they won't be soothed by the substance of *The Homeless*. In scrutinizing the available data, Jencks demolishes nearly every argument made by homeless advocates.

housing subsidies rose, not fell, during the Reagan administration; all the Reaganites did was to slow the rate of increase in spending for these programs. "The slow but steady growth of low-income housing subsidies under Presidents Reagan and Bush was one of the few liberal success stories in a generally conservative era," Jencks writes. "Federal outlays for low-income housing rose faster than outlays for either social security or defense."

IT IS ONLY IN THE LAST CHAPTER OF *THE Homeless* that Jencks, having shown the fallaciousness of most of the arguments put forth by homeless advocates, joins his liberal colleagues in calling for more tax dollars to end homelessness. He suggests that perhaps as much as $18 billion each year might be necessary to ensure that the homeless have shelters and jobs.

Consider the most common types of homeless people: single mothers and their children, and childless adult males. Workfare is not an effective solution for single mothers, Jencks argues, because unless a job pays at least $7.00 an hour, a single parent won't be able to afford day care, transportation, or work clothes. So he feels the government has to subsidize rents, day-care fees, food purchases, and health insurance for these mothers until they are able to establish themselves in the work force.

As for underclass men, Jencks says their chief problem is the inability to find steady work, so he proposes that the government create large numbers of cubicle hotels, establishments consisting of many small, windowless rooms. To fill these hotels, the government would also sponsor day-labor markets in which private employers could hire homeless people for a day. If there weren't enough private-sector jobs available, then the government would offer jobs, paying with vouchers redeemable for a cubicle and three cheap meals a day in return for doing about four hours of work. More work could earn more vouchers that could be used for better food or cashed in for an apartment. Ultimately, homeless men could build good work records that would prepare them for private-sector employment.

These ideas are interesting but fundamentally flawed. Jencks, for instance, never discusses the chief obstacle to federal jobs programs: public-sector unions. These unions, unlike their private-sector counterparts, are still powerful, and they will do everything they can to guarantee that any government jobs for the homeless are marginal, trivial, and demeaning. While Jencks's solution might be better than existing welfare programs, it is neither practical nor attainable.

Jencks argues that job programs are necessary because, while few Americans feel that the government should give everyone who asks food and housing, "most of us do feel an obligation to help people

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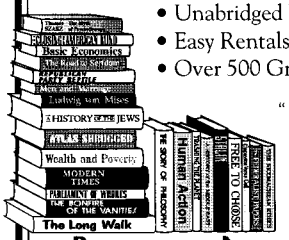

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who cannot help themselves or are trying to do so and simply need an opportunity." While this is certainly true, the natural compassion of most Americans is deadened every time a healthy stranger thrusts a cup in their face and demands money or a politician calls for boosting taxes to help the homeless. As Marvin Olasky has shown, church-based groups do a much better job than government agencies in helping the homeless become responsible and productive. But Jencks conspicuously ignores the role religious groups and other private associations play in fighting poverty and homelessness.

While Jencks's conclusions do not stray far from liberal orthodoxy, his analysis of the nature and persistence of homelessness is fresh and interesting. Jencks does a great service in showing that many debating points used by homeless advocates to advance their agenda are either untrue or misleading. *The Homeless* won't end the debate about homelessness, but it could very well reshape it. ®

Contributing Editor Martin Morse Wooster is the author of Angry Classrooms, Vacant Minds *(Pacific Research Institute).*

Deregulatory Drivel

By William A. Niskanen

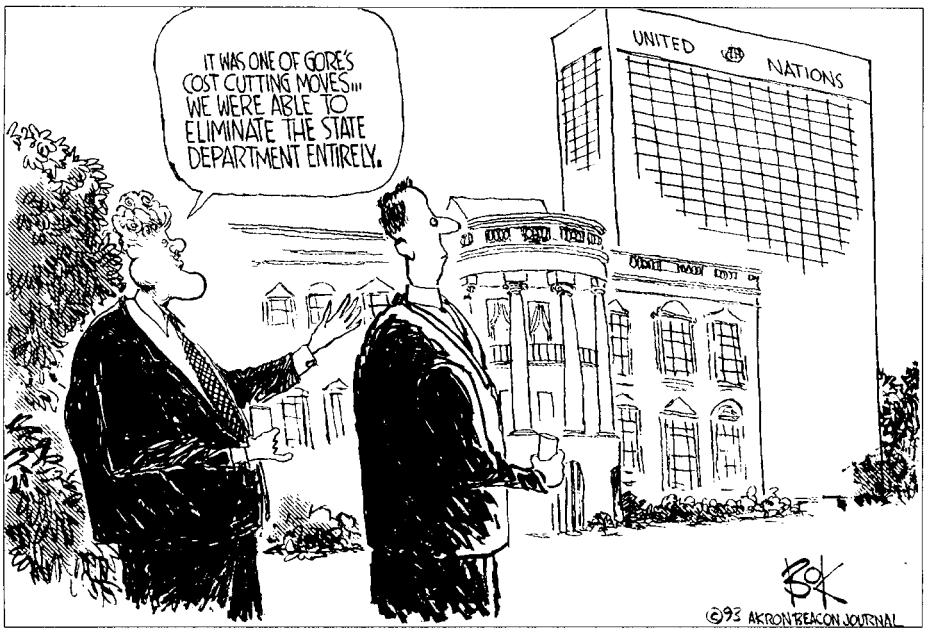
Deregulating the Public Service, edited by John J. Dilulio, Washington: The Brookings Institution, 308 pages, $31.95/$12.95 paper

"CAN GOVERNMENT BE IMproved?" asks the subtitle of this book. "Yes," say the 14 authors, if the government would only implement the standard reform from the public-administration literature: hire "the best and the brightest" and give them the knowledge and authority to do their jobs. Hence, *Deregulating the Public Service* is about removing restrictions on public servants' authority that presumably prevent them from doing a better job.

As with Al Gore's National Performance Review, the unacknowledged perspective of this book is that of a government manager. Most men and women who serve in public-service positions have a focused perspective on the mission of their agency, are genuinely committed to that mission, and are personally honest and industrious. This outlook leads most government managers and public-administration scholars to conclude that government performance could best be improved by reducing the restrictions on government managers.

Maybe so, but analysts should reflect more seriously on the reasons why most proposals to reduce such regulations are rejected and why the scope and detail of these regulations continue to increase. The beginning of wisdom on these issues is to recognize that most regulations, like most other conditions perceived to be wasteful, are there because someone in authority wants them.

Legislators and elected executives monitor agencies by several criteria, with preferences not just for an agency's primary output but also for how that output is produced. Regulations are the basic means by which politicians implement their various preferences. Government officials, for example, want to distribute employment, contracts, and grants by area, size of business, race, or some other politically meaningful criterion. Personnel rules reflect a preference to avoid the appearance of favoritism, ethics rules to avoid the appearance of a conflict of interest, transparency rules to avoid the appearance of ex parte deals. While many regulations seem inefficient to government managers (and others) who are most concerned about the primary output of an agency, they may not be wasteful in terms of a broader set of political preferences.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THE BEST WAY TO MAKE A CASE AGAINST such stifling regulations, then, is to provide politicians and the public with information about regulatory costs in terms of increased spending or lower output. Unfortunately, this book, like all too much of the public-administration literature, provides little significant analysis or evidence on that key issue.

Paul Volcker and William Winter, for

example, call for "nurturing the pride and competence of men and women willing to devote themselves to careers in public service" by higher pay, fewer political appointments, and less regulation. Gerald Garvey and John DiIulio contribute a thoughtful article on the sources of public-service regulation without making an adequate case that such regulation has been excessive. James Q. Wilson criticizes both the Reinventing Government and the National Performance Review programs for not providing a theory about what government should do and for failing to address the incentives of government managers.

Legislators and elected executives care not only about an agency's primary output but about how that output is produced. For example, they want to distribute employment, contracts, and grants by area, size of business, or race.

John Burke concludes that government performance would improve if we all trusted government more, a thesis that seems to have gotten the equation precisely backward. Constance Horner and Steven Kelman suggest strategies for reducing personnel and procurement regulation. Richard Nathan makes a case for a strong executive leadership, and Neal Peirce documents the effects of strong leadership in Florida and Philadelphia. Mark Moore and Mark Alan Hughes, respectively, discuss the regulation of police and mass transit.

Melvin Dubnick contributes a thoughtful article on the three major challenges to the classical bureaucratic paradigm: the minimalists (Niskanen et al.), the reinventors (Osborne and Gore), and the deregulators (the authors in this collection). Dubnick concludes that the minimalists have the most sophisticated theory, the reinventors the most popular appeal, and the deregulators the most practical suggestions. Among them, Donald Kettl wins the prize for the most obtuse conclusion: "Reenergizing politics so that it drives the interdependent networks toward a new definition of the public interest is the ultimate key to relegitimizing government."

As the above summary suggests, this is not a very interesting or coherent collection. That is too bad, because several important patterns in public service need to be properly explained. Inefficiency in government is rather like bad weather; everyone talks about it, but no one does anything about it. Almost every federal administration has sponsored an efficiency commission, announced its findings with great fanfare, and then quietly walked away from most of the recommendations.

The Clinton administration has dutifully completed the first two stages of this process, but what will happen next remains unclear. It may be telling, however, that soon after the publication of the National Performance Review, the official responsible for monitoring its enactment was reassigned. The vacancy has not yet been filled. Clinton seems to have decided that he has already made his mark on deficit reduction and efficiency in government.

My vision of purgatory is being forced to read the whole corpus of public-administration literature. Unless you face this same grim prospect and want to get ahead on such a joyless chore, there is little reason to read this book. R

William A. Niskanen is chairman of the Cato Institute.

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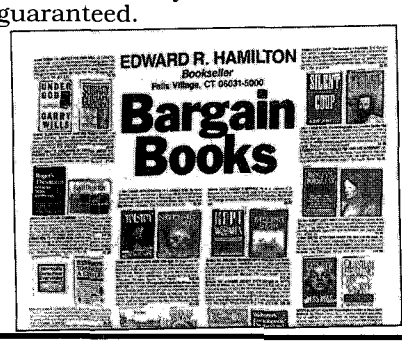

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By Thomas W. Hazlett

The Emerging Republican Death Wish

IT TOOK SOME HEAT DURING THE 1992 election campaign for saying, and I quote, "If you desire to help your Republican friends, hold your nose double-tight and vote Clinton-Gore in '92." Fortunately, Republican heat was only about room temperature in those days. Now, with *The Economist* and other learned outlets calling 1994 the first legit shot for a Republican Senate since 1986, I humbly rest my case.

But I am not here to crow, cackle, or guffaw. (Much.) While the pundits were trumpeting the demise of the Republican Party, the Clintonites were pulling all-nighters to put its pieces back together again. In response to the stunning GOP victories of recent months, the president insists on calling newly elected Republican senators, governors, and mayors simply a sign of the "change" vote which elected Mr. Clinton in the first place. By this logic, a vote against Mr. Clinton in 1996 will be a vote for the policies of change which Mr. Clinton stood for in 1992. Finally, a clear Clinton mandate!

That the administration megadoses daily on both government and governmental incompetence (complementary outputs, as economists say) should make the task of the opposition party both fun and profitable. This allows the nominally anti-government party yet another chance to get its act together. Theoretically.

The Republicans have been on the precipice of real power before. Following the collapse of the Great Society, party strategist Kevin Phillips was hawking "The Emerging Republican Majority." By 1974, the Democrats—enjoying an unlikely windfall from Watergate (who'da guessed that the party of Lyndon Johnson would regain power on voter reaction against the abuse of power?)—were propelled to commanding congressional (and, two years later, presidential) victories by the howling winds of Republican scandal. The same gale drove Ronald Reagan's two-term tenure to an ending disappointment with Iran-contra. Finally, the ultimate botch: George Bush.

Today we may observe The Emerging Republican Death Wish. The party's suicidal tendencies are on neon display in Virginia, a state which hopes to host a new Disney theme park and is gearing up politically with a gaggle of Goofys. Oliver North, the duly nominated GOP candidate, personifies the problem of runaway government. He lied to Congress, illegally diverted U.S. funds, and made mincemeat out of statutory law by engaging in rogue foreign-policy gambits. Yet Republican conservatives adore Ollie because he brags about defying Congress and taking the law into his own hands. He was on a mission from God.

What a perfect mirror to the left! No petty bureaucrat ever screwed some innocent taxpayer out of his/her rights without some high-falutin morality play to trumpet, and no Democratic politician ever bloated the federal Tyrannosaurus on the premise of personal greed. I warn you so-called conservatives. Do not get into an "ends justifies the means" contest with these people. They are the Superbowl champions of mega-justifications for huge state action.

Today the GOP platform could be most aptly described as Reaganesque—Nancy Reaganesque. "Just say no to Bill Clinton," and you've covered 90 percent of the GOP's intellectual turf. It was, in fact, one of the GOP's relative geniuses—Bill Kristol—who instructed the party bigwigs to fight Bill and Hillary by denying a health-care crisis exists. OK, *crisis* may be a bit strong—but the reason people in politics exaggerate like this is that tough talk conveys that you care. You ought to care—about the myriad regulations and taxes and restrictions on competition that drive medical costs up. Not a crisis? If you don't want to play the game, why'd you bother to dress up so funny at your convention?

FOR ALL OF BILL CLINTON'S FOIBLES, fabrications and failings, you have got to hand him this: He's dominating the debate. Simply put, Bill Clinton is the man with the plan. That sets the agenda. I have actually heard conservative leaders say that they "oppose health care"—inadvertently but revealingly ceding Bill Clinton the authority not just to define a policy but to homestead an entire sector of the U.S. economy. (Unless they really do oppose health care, in which case I was confusing the views of Christian Science with those of the Republican right.)

The Republicans cannot set the agenda in the manner in which the Democratic president has. After all, Clinton didn't have the agenda set (at least this agenda) prior to occupying the White House. By the same token, the Republicans never did get around to this crucial task through 12 years of Reagan-Bush. The world still awaits the Republican Agenda—a broad set of limited-government solutions to the problems of health care, welfare, and slow economic growth. Waiting for a rational and persuasive party platform to magically materialize from a cabal of anti-abortion fanatics in 1996 would constitute an exceedingly generous contribution to Mr. Clinton's re-election campaign. Quantified, the amount easily exceeds $1,000. That is a clear violation of federal law—for no higher purpose whatever. ®

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

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